

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**


**THE LUTHERAN CHURCH –
MISSOURI SYNOD, a Missouri
nonprofit corporation,**

Plaintiff,

V.

**DONALD CHRISTIAN, CHRISTOPHER
BANNWOLF, CONCORDIA
UNIVERSITY TEXAS, INC., & JOHN
DOES 1-12**

Defendants.



CASE NO. 1:23-cv-1042-DAE

CASE NO. 1:24-cv-00176-DAE

**PLAINTIFF’S OBJECTIONS TO THE MAGISTRATE’S
REPORT AND RECOMMENDATION**

The Lutheran Church – Missouri Synod (“LCMS”), a Missouri nonprofit corporation, hereby submits its Objections to the Report and Recommendation of the United States Magistrate Judge dated November 20, 2024. (Doc. 52.)

INTRODUCTION

LCMS objects to the Report and Recommendation (the “Report”) and asks the Court to reject it as unsound under Texas corporate law and the First Amendment, each of which provide an independent basis for the requested result. The Report misunderstands the legal significance of Synod¹ – an ecclesial body – incorporating as LCMS to carry out its secular functions. This is

1 LCMS (aka “corporate Synod”) is the Missouri corporation established in 1894. Synod refers to the full ecclesial extent of the church body, founded 1847, that, for central, national purposes, is incorporated as LCMS, including all its separately incorporated agencies. *See* Declaration of Rev. Dr. John Sias (Doc. 23-1). LCMS and Synod share the same Constitution, Bylaws, members, officers, board, and member meetings. *Id.*

compounded further by a misunderstanding of Synod/LCMS governance documents which CTX has taken out of context and misrepresented. The Report turns what began as a narrow jurisdictional question into, if adopted, a legal quagmire with far ranging and complex implications beyond this case and the parties to it.

The Report rejects the exclusivity of the Synod's corporate form and saddles it with a parallel unincorporated form invented by the Magistrate for the first time in over 100 years of the existence of LCMS. This unnecessary recommendation² is contrary to the purpose and intent of Texas' adoption of the Uniform Unincorporated Nonprofit Associations Act ("UUNAA") on which the Magistrate relies, directly violates Texas' "internal affairs doctrine" as incorporated into the Texas Organizations Code, and runs afoul of the Full Faith & Credit, Commerce and Due Process clauses of the United States Constitution as well as the First Amendment.

***Objections Based on Texas State Corporations Law
and Related Constitutional Precepts***

The Report misinterprets and misapplies the law arising under Chapter 252 of the Texas Business Organizations Code, which is Texas's codification of UUNAA. The purpose of UUNAA is not to create alternative and concurrent unincorporated entities when the organizing body has already chosen to incorporate. UUNAA was always intended to be, and is, a "default" statute providing for the judicial recognition of "unincorporated nonprofit associations" so that ***despite not being incorporated*** they can interact in civil society with similar protections and obligations as those of more formal corporate structures. Here the members of Synod have incorporated, as LCMS, and have even registered as such in Texas. TUUNAA is not a tool for courts to disregard

² LCMS is voluntarily a party capable of suing and being sued (under both Missouri and Texas law) and possesses all requisite authority to act and respond in full to any relief granted for or against it in this, and any other, lawsuit to which it is a party. It is LCMS's legal capacity that is alleged. CTX only first raised the issue to engage strategic court shopping.

these actions and, instead, invent civil entities that replace or run parallel to a group's chosen and legal corporate form.

Furthermore, by ignoring LCMS' incorporation under Missouri law and applying Texas law to corporate formation instead, the Report violates Texas' "internal affairs doctrine" as formalized in the Texas Organizations Code in mandatory, non-discretionary terms. This in turn violates the Full Faith & Credit, Commerce and Due Process clauses of the United States Constitution as well. Without reaching the First Amendment issues before the Court, the Report is plain error under Texas law and the Court should reject it on this basis alone.

***Objections Based on the First Amendment
and the Church Autonomy Doctrine***

If reached, the First Amendment issues are dispositive as well. By determining that the ecclesiastical Synod body exists contemporaneously with LCMS as a secular unincorporated nonprofit association, the Report violates Synod polity and governance and, if accepted by the Court, will judicially reorganize a church into something it is not and has never been. This is strictly forbidden by the First Amendment and the Church Autonomy Doctrine. Neither the Supreme Court nor the State of Texas recognizes a "neutral principles" exception that permits a civil court to re-shape the structure of a religious organization. The Texas Supreme Court, applying well-settled First Amendment jurisprudence, has held:

A court may exercise jurisdiction over a controversy if it can apply neutral principles of law that ***will not require inquiry into religious doctrine***, interference with the free-exercise rights of believers, ***or meddling in church government***. [] Indeed, any exception to ecclesiastical abstention by application of neutral principles must be narrowly drawn to avoid inhibiting the free exercise of religion or imposing secular interests on religious controversies. In other words, courts should consider not only whether a neutral principle exists without regard to religion, ***but also whether the application of neutral principles would impose civil liability upon a church for***

complying with its own internal rules and regulations or resolving a religious matter.

In re Lubbock, 624 S.W.3d 506, 513 (Tex. 2021) (emphasis added, internal citations omitted). The Report violates these strictures and represents an unconstitutional intrusion into, and modification of, ecclesial polity and governance.

The Report ignores substantial evidence from both the governance documents presented as well as the declaration of Rev. John Sias, the LCMS leading scholar on its history, governance documents and polity.³ *See* Sias Declaration (Doc. 23-1). The Magistrate cloaks his choice to ignore ecclesiastical documents in favor of a court’s interpretation of civil law under a flawed interpretation of the “neutral principles” doctrine. Neutral principles does not *ignore* the polity and governance of a church or that church’s explanation of it. On the contrary, it requires civil courts to accept them with deference and apply them to the remaining civil issues when possible. As such, the Report errs in both process and conclusion.

For each of these reasons, and based on the additional rationale and authorities below, LCMS objects to the Report and requests that the Court issue an order rejecting the Report in its entirety and finding it has diversity jurisdiction over this dispute, or remanding the case to the Magistrate Judge for further proceedings.

OBJECTIONS AND ARGUMENT

I. Objection to the Report’s Application of TUUNAA to Judicially Invent “Synod” as an Unincorporated Nonprofit Association.

Obviating the need to reach the deeply troubling First Amendment implications, the Court should reject the Report for three independent, secular, and outcome determinative reasons. First,

³ A court may look beyond the pleadings to affidavits, discovery, declarations and other types of evidence to consider both subject matter and personal jurisdiction. *Pena Arita v. United States*, 470 F. Supp. 3d 663, 679 (S.D. Tex. 2020); *Lloyd’s Syndicate 457 v. Am. Glob. Mar. Inc.*, 346 F. Supp. 3d 908 (S.D. Tex. 2018).

the Report’s recommendation that the ecclesial Synod exists contemporaneously as an *unincorporated* nonprofit association despite *incorporating* as LCMS turns TUUNAA on its head. The Report directly contradicts the purposes and policies undergirding TUUNAA as articulated by both the Texas legislature in passing it and the Uniform Law Commission (“ULC”) in drafting it. Second, the Report’s recommendation to create a civil entity under TUUNAA runs afoul of the Texas Business Organizations Code which memorializes Texas’ adoption of the internal affairs doctrine. The internal affairs doctrine requires courts applying Texas law to recognize and apply the corporate formation laws of the state of incorporation – here Missouri. Third, applying Texas corporate law to defeat the purpose of a Missouri corporation violates the Full Faith & Credit, Commerce and Due Process clauses of the United States Constitution.

This Court’s “primary objective” in construing a statute is to “give effect to the legislature’s intent.” *First Am. Title Ins. Co. v. Combs*, 258 S.W.3d 627, 631-32 (Tex. 2008). In doing so, a court must “ascertain and effectuate the legislature’s intent without unduly restricting or expanding the statute’s scope.” *Janvey v. Golf Channel, Inc.*, 487 S.W.3d 560, 572 (Tex. 2016). The starting point is the plain language of the statute. However, “[i]n ascertaining the legislature’s intent, [courts] may also consider other matters, including the law’s objective and the consequences of a particular construction.” *CITGO Petro. Corp. v. Hegar*, 636 S.W.3d 281, 287 (Tex. App.—Austin 2021, pet. denied) (citing Tex. Gov’t Code § 311.023).

Interpretation and application of TUUNAA requires an additional, non-discretionary consideration as well: “A uniform act included in a code ***shall be construed to effect its general purpose to make uniform the law of those states that enact it.***” Tex. Gov’t Code § 311.028 (emphasis added). As the court held in *MT Falkin Investments, L.L.C. v. Chisholm Trail Elks Lodge No. 2659*, “although the official comments to UUNAA are not law, they are persuasive

authority concerning interpretation of chapter 252 because the legislature presumably considered those comments when it adopted the statute.” 400 S.W.3d 658 (Tex. App.—Austin 2013, pet. denied) (citing *Fetter v. Wells Fargo Bank Tex., N.A.*, 110 S.W.3d 683, 687 (Tex. App.—Houston [14th Dist.] 2003, no pet.).

These precepts demonstrate why the Report improperly construes TUUNAA. The Report not only fails to “effect [TUUNNA’s] general purpose” but flies in the face of it. Further, the Magistrate’s findings “unduly expand the scope” of TUUNAA in violation of Texas law and cannot be said “to make uniform the law in those states that enact it.” No state or federal court has ever interpreted any codification of UUNAA to manifest a parallel unincorporated nonprofit association out of a nonprofit organization that is already incorporated.

Applying these precepts to the Report, the improper construction of TUUNAA is patent. The Report not only fails to “effect its general purpose” but flies in the face of it. Further, the Magistrate’s findings “unduly expand to scope” of TUUNAA in violation of Texas law and cannot be said “to make uniform the law in those states that enact it.” No state or federal court has ever interpreted any codification of UUNAA to manifest a parallel unincorporated nonprofit association out of a nonprofit organization that is already incorporated.

A. The Underlying Intent and General Purposes of TUUNAA.

The Magistrate failed to examine the general purposes and intent of the uniform act as required by the Code Construction Act. *See* Tex. Gov’t Code § 311.028. That mandatory analysis is particularly important because UUNAA is a “skeletal”⁴ enactment and, as such, courts must diligently consider and apply its underlying purposes and intent in construing its limited

⁴ Miller, Elizabeth, DOCTORING THE LAW OF NONPROFIT ASSOCIATIONS WITH A BAND-AID OR A BODY CAST: A LOOK AT THE 1996 AND 2008 UNIFORM UNINCORPORATED NONPROFIT ASSOCIATION ACTS, 38 Wm. Mitchell L. Rev. 852 (2012).

provisions. When performed, the analysis reveals Synod’s choice to formally incorporate LCMS many years before UUNAA was created satisfies every “need” UUNAA was intended to address and that it was never intended to apply where a nonprofit was already incorporated.

Texas adopted TUUNAA in 1995. *MT Falkin*, 400 S.W.3d at 661. The Bill Analysis for the act from the Texas legislature and the Prefatory Statement and official comments to UUNAA drafted by ULC paint a picture wholly at odds with the Report. According to the Texas Legislature and ULC, TUUNAA was created to address three fundamental “problems” arising out of how the common law and society interacted with – or could not interact with – unincorporated nonprofit associations. The Texas Legislature’s Bill Analysis states the background and purpose as follows:⁵

BACKGROUND

This bill adopts the Uniform Unincorporated Nonprofit Association Act (the “Uniform Act”) drafted and approved by the National Conference of Commissioners on Uniform State Laws in 1992. The Uniform Act seeks to statutorily reform the common law concerning unincorporated, nonprofit associations *in three basic areas: authority to acquire, hold, and transfer property, especially real property; authority to sue and be sued as an entity; and contract and tort liability of officers and members of the association.*

PURPOSE

To give to unincorporated, non-profit associations which are typically churches or property owners’ groups, *the legal authority to acquire, hold and transfer property; to sue and to be sued; and to conduct their business affairs without subjecting the membership to legal responsibility of the association or others of its members.*

(See Bill Analysis for C.H.S.B. 1661.)

⁵ The Texas Legislature lifted this precise language from ULC’s Prefatory Notes explaining the three purposes of UUNAA as follows: “This Act reforms the common law concerning unincorporated nonprofit associations in three basic areas - authority to acquire, hold, and transfer property, especially real property; authority to sue and be sued as an entity; and contract and tort liability of officers and members of the association.” Unif. Unincorp. Nonprofit Ass’n Act Prefatory Note (Unif. L. Comm’n 1992).

The ULC's Prefatory Notes go on to discuss each of these three issues and why the common law was inadequate to address them. Tellingly and logically, *the reason for each is because the associations were not otherwise incorporated*. As the ULC explains:

At common law an unincorporated association, whether nonprofit or for-profit, *was not a separate legal entity*. It was an aggregate of individuals. In many ways it had the characteristics of a business partnership. *This approach obviously created problems*.

Unif. Unincorp. Nonprofit Ass'n Act Prefatory Note (Unif. L. Comm'n 1992) (emphasis added)

UUNAA was created to address those "problems" by filling those gaps. Those gaps do not exist when the nonprofit organization has already incorporated, such as LCMS.

This is unequivocally confirmed by ULC's discussion of each of the three "problems" it sought to address:

- As to the "authority to acquire, hold, and transfer property" ULC explains: "A gift of property to an unincorporated association failed *because no legal entity existed to receive it*." *Id.* (emphasis added)
- Regarding the problem of "authority to sue and be sued as an entity" ULC explains: "Proceedings by or against an unincorporated association presented similar problems. *If it were not a legal entity*, each of the members needed to be joined as party plaintiffs or defendants." *Id.* (emphasis added)
- Lastly, the ULC explained that the problem of "contract and tort liability of officers and members of the association" arose because "[u]nincorporated associations, *not being legal entities*, could not be liable in tort, contract, or otherwise for conduct taken in their names. On the other hand, their members could be." *Id.* (emphasis added)

The common thread is plain – UUNAA sought to solve problems caused by the failure to incorporate.

This common thread continues to weave its way throughout the ULC's Prefatory Notes and official comments, reinforcing the purpose and intent of UUNAA to provide default, gap-

filling protections and obligations that the common law did not adequately address for those organizations ***which had not incorporated***. To wit, the Prefatory Notes explain:

The Uniform Unincorporated Nonprofit Association Act (UUNAA) reforms the common law in three basic and important areas. ***It was drafted with the small informal associations in mind. These informal organizations are likely to have no legal advice and so fail to consider legal and organization questions, including whether to incorporate.***

Id. (emphasis added) Indeed, the ULC even states a preference for formal incorporation over the finding of an unincorporated nonprofit association because incorporation better protects society at large:

There has been concern that this Act may deter nonprofit organizations from incorporating and that failure to incorporate would deprive the public of protections incorporation would provide. Clearly, incorporation does provide governmental involvement that this Act does not.

Id.

UUNAA was amended in 2008 and ULC further elaborated on its underlying purpose and intent in language entirely consistent with the Prefatory Notes and comments of the original. As on example, the Prefatory Note explains that an unincorporated nonprofit association cannot be found to exist where, as here, a formal nonprofit corporation has already been created by statute:

An unincorporated nonprofit association (nonprofit association) is a nonprofit organization ***that is not*** a charitable trust or ***a nonprofit corporation or any other type of association organized under statutory law that is authorized to engage in nonprofit activities.*** ***A nonprofit association is, thus, a default organization.***

Unif. Unincorp. Nonprofit Ass’n Act Prefatory Note (Unif. L. Comm’n 2008) (emphasis added) Further, in the official comment for the definition of “nonprofit association” ULC removes all doubt: “***An organization cannot be a nonprofit association if it is organized as a corporation*** or is a for-profit unincorporated entity, e.g., a partnership.” Unif. Unincorp. Nonprofit Ass’n Act §

2 cmt. 11 (Unif. L. Comm’n 2008) (emphasis added) ULC’s further confirms that it does not apply to nonprofit corporation such as LCMS: “The basic framework of the act is not to be a substitute for organizing as a nonprofit corporation under state law.” Unif. Unincorp. Nonprofit Ass’n Act Prefatory Note (Unif. L. Comm’n 2008). UUNAA is never to be used to create an “unincorporated nonprofit association” when that group has already chosen incorporation, which is the expressly preferred form. The Report stands in direct contradiction to each one of these precepts and purposes.

B. The Report Contradicts the Intent and Purpose of TUUNAA.

Measured against TUUNAA’s intents and purposes, the Report contradicts the act in dispositive ways. First and most fundamentally, the drafters of UUNAA have made it abundantly clear that an unincorporated nonprofit association is to be found as a default entity only when the nonprofit organization has not already incorporated. That is because, simply put, the act of incorporation resolves the only three “problems” UUNAA addresses.

There is no valid counter-argument to this. The statements of intent and purpose saturate the Prefatory Notes and Comments with these precepts at every turn. Moreover, they are entirely consistent with the plain language of TUUNAA. In passing it, the Texas legislature made no changes nor included any qualifying language to reject that intent. As such, “the legislature presumably considered those comments when it adopted the statute.” *MT Falkin*, 400 S.W.3d at 661. Further implementation of the stated purpose of adopted uniform codes is mandatory as a matter of statutory construction in Texas. *See* Tex. Gov’t Code § 311.028 (“A uniform act included in a code *shall be construed to effect its general purpose to make uniform the law of those states that enact it.*” (emphasis added)).

Second, that Synod exists as an ecclesiastical body with ecclesiastical duties is irrelevant to application of TUUNAA because LCMS is there to satisfy every purpose for which the statute exists. LCMS facilitates property ownership, explicitly possesses the ability to sue and be sued such as here, and exists as a civil entity bound to the laws of contract and tort liability. *See* Sias Declaration (Doc. 23-1).

Property Ownership: (i) Const. Art. IV – Synod “has formed corporate entities” that have “legal powers to purchase, hold, administer and sell property of every description [].”; and (ii) LCMS Article of Incorporation VI – “This corporation shall have power to acquire by gift, grant, demise, devise, bequest, purchase, purchase, or otherwise, property of every kind and description, real, personal or mixed”.

Ability to Sue and Be Sued: Bylaw 1.2.1(f)(2) – Defining the “Corporate Synod” as LCMS “a Missouri nonprofit corporation” that “acknowledge[s] its responsibility to be subject to civil authority” (which regardless of the statement of intent, is a necessary consequence of incorporation in any event).

Civil Entity Bound to Contract/Tort Law: Bylaw 1.2.1(f)(2) – Same language and same inherent consequence of incorporating under Missouri secular corporations law; and (ii) Bylaw 3.3.4.4 – LCMS Board of Directors is “authorized to take action on behalf of the Synod any action of such business affairs and legal affairs”.

None of this can be resolved with the Report. For example, at page 7 the Magistrate states the following as though it creates a legal quandary:

In its complaint, LCMS asks this Court to award declaratory relief restoring all its “rights, title, and interest related to CTX.” Yet, in its response to the motion to dismiss, LCMS states that the Synod is not a legal entity “separate” from LCMS, and in fact LCMS was created to carry out the Synod’s secular functions.

(Doc 52-7.) This presents no quandary at all and is wholly unremarkable. This simply describes part of what incorporation is. Under TUUNAA incorporation is not only proper, but as noted above it is the practice preferred by the drafters because it offers even more protections to society than does the act’s limited “default” safety net where incorporation is absent. We know this because the drafters of UUNAA have told us, repeatedly, in no uncertain terms. Neither the Report nor CTX’s briefing cites a single case to the contrary and there are none. The reasons for this could be myriad, but a likely one is that it is so clearly not the law that no one ever bothered to elevate the issue on appeal. This is not surprising given the clarity UUNAA’s drafters provided.

The Report cites *S. Cent. Jurisdictional Conference of United Methodist Church v. S. Methodist Univ.*, 674 S.W.3d 334 (Tex. App.—Dallas 2023, pet. granted) in support because it permitted a church conference to bring “certain claims on its own behalf, as opposed to permitting a *separate entity* to bring claims on behalf of a religious denomination.” (emphasis in Report) But that case: (a) did not involve TUUNAA; (b) did not declare that a religious organization which incorporates a civil law entity will still be considered an unincorporated association; and (c) involves the opposite scenario to that here, as the unincorporated association “church conference” was affirmatively seeking a declaration of standing to litigate rights for itself which were only addressed under Business Organizations Code § 20.002 regarding *ultra vires* acts.

The Report cites no cases analyzing UUNAA despite its misapplication being the lynchpin of the recommendations. If Synod is not an unincorporated nonprofit association – and the overwhelming weight of authority tells us it is not – the Report would necessarily recommend denying both dismissal and remand as jurisdiction in this Court is proper. Instead the Report represents a superficial reading of TUUNAA relying only on the statutory definition of what may constitute an unincorporated association. (Doc. 52-16.) But this conclusion puts the cart before

the horse. The Report ignores that the reason for TUUNAA's existence is to serve as a default mechanism *where incorporation is lacking*. Put another way, step one of TUUNAA is to determine if the alleged "unincorporated nonprofit association" is already incorporated. If so, there is no step two.

At two different points the Report states that Synod satisfies the statutory definition because "there is no evidence that Synod is incorporated." (*Id.* at 13, 16.) The Magistrate fails to consider Synod's act of incorporation despite the record evidence for it. *See, e.g.* Sias Declaration (Doc. 23-1). Synod did incorporate. That is what the "Lutheran Church Missouri Synod, Inc." is – a Missouri nonprofit corporation. Moreover, LCMS was incorporated to perform all of the functions with which TUUNAA is concerned. Further, Synod's act of incorporating LCMS for operation in the secular world as its civil law entity is not even a disputed fact, rendering the Report's statement both perplexing and inaccurate.⁶

C. The Report Overlooks the Consequences of its Misconstruction of TUUNAA.

"In ascertaining the legislature's intent, [courts] may also consider other matters, including the law's objective and the consequences of a particular construction." *CITGO Petro. Corp. v. Hegar*, 636 S.W.3d 281, 287 (Tex. App.—Austin 2021, pet. denied) (citing Tex. Gov't Code § 311.023). The Report offers no such consideration and, in application, would produce absurd results by finding those who have chosen to incorporate nonetheless remain a parallel unincorporated association and civil law entity afterwards. This construction denies citizens the right to select their preferred and legal corporate form, and further denies society the more complete set of protections that come with incorporation. The process of incorporation is based on well-settled public policy inuring to the benefit of society as a whole and for the incorporator's

⁶ CTX proffered no evidence to contradict Rev. Sias' Declaration.

own protection and certainty when operating with secular institutions and the courts. It would be earth-shaking precedent indeed if the act of incorporation no longer grants those certainties to both the incorporating party and to the public. And if applied only to religious organizations and not secular ones, it is also patently unconstitutional.

These are not the only serious consequences of applying the Report's rationale to the real world. A non-exclusive list of further examples:

- The Report expresses concern that if it does not declare Synod to be a Texas unincorporated nonprofit association it will not be subject to suit outside of Missouri. (Doc. 5209.) First, it is unclear why this would be considered a problem by any court as all formally incorporated organizations are subject to the same jurisdictional rules. The Report's need to create different rules for Synod to ensure they can be sued in every jurisdiction in the country is where the problem arises. Under the Report Synod, despite being a purely ecclesial body pursuant to its own polity and religious laws, would now be subject to personal jurisdiction wherever Synod members reside – which is all over the world. Moreover, if Synod is included as a party no case could ever be removed to federal court, as is LCMS's right as a Missouri corporation located in Missouri. The Report has created a new set of rules denying Synod its right to incorporate and enjoy the benefits, and endure the burdens and obligations, of that choice. It has removed the benefits, left the burdens in place, and even enhanced them significantly.

- What does being an unincorporated nonprofit association mean outside of Texas? Many things. There is no certainty or uniformity on which Synod/LCMS can now rely going forward on a state-to-state basis. Nor can its members who, by virtue of the Report, may now take on more or less duties and liabilities depending on varying states laws placing them in an unpredictable and untenable situation as private citizens. Despite its name TUUNAA is hardly

“uniform.” Only 14 states have enacted any version of it, and Missouri has rejected it wholesale. Other states have as well and employ widely variant versions of unincorporated associations law, including many based on a patchwork quilt of common law doctrines. The Prefatory Notes to UUNAA specifically note this as a significant and ongoing problem. If the Report stands, Synod/LCMS finds itself subject to all manner of unknown and variant outcomes in any state, denying it the certainty guaranteed by incorporating in Missouri and the internal affairs doctrine. The Report opens a Pandora’s Box to which the act of incorporation is to be the lock.

- In application the Report denies not just Synod/LCMS the right to polity and governance based on separation of the spiritual church of God from a civil form through which it interacts with the laws of man, but all other religious organizations adhering to it as well as a matter of governance and polity. Which is, interestingly enough and contrary to the Report, precisely how the First Amendment wants it. As reflected in Jefferson’s famed letter to the Danbury Baptists:

I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should “make no law respecting an establishment of religion, or prohibiting the free exercise thereof,” thus building a wall of separation between Church & State. Adhering to this expression of the supreme will of the nation in behalf of the rights of conscience, I shall see with sincere satisfaction the progress of those sentiments which tend to restore to man all his natural rights, convinced he has no natural right in opposition to his social duties.

Jefferson, Thomas, *Letter to the Danbury Baptists*, January 1, 1802. LCMS polity and governance reflects this “supreme will of the nation” – to be free from governmental interference in establishing its religion while also understanding its rights do not absolve it from its larger “social duties” to secular society. The Synod/LCMS church governance documents before the Court express this unproblematic duality in clear terms. The Report’s rationale, if adopted, will range

far and wide to invalidate forms of governance and polity which religious organizations are constitutionally entitled to employ, and do in fact employ regularly in a variety of denominations.

- Synod could be cited in a state in which it has congregations – separately incorporated congregations, another critical element disregarded by the Report – for doing business without authority despite that it has never been, nor ever attempted to operate as, an unincorporated nonprofit association in that state. Because it is not one.

- A Missouri nonprofit corporation – which LCMS is – and an unincorporated nonprofit association – which Synod is not – are two different classes of legal entities bound to different sets of laws, own property differently, make organizations decisions differently, have different liability for the entity and its officers and directors, etc. The list goes on and varies state to state. Is LCMS allowed to rely on Missouri law? Not according to the Report. According to the Report Missouri law is now largely irrelevant as LCMS must now conform to the divergent laws of every jurisdiction in the nation. This is an onerous obligation rife with uncertainty that the act of incorporation is intended to avoid as a well-recognized matter of public policy.

D. The Report’s Attempt to Create an Unincorporated Nonprofit Association under Texas Law Violates the Texas Business Organizations Code, Texas’ Internal Affairs Doctrine and the Full Faith & Credit, Commerce and Due Process Clauses of the United States Constitution.

The Report’s recommendation to invent Synod as a second civil entity despite its choice to incorporate as a Missouri non-profit corporation over 100 years ago violates both the Texas Business Organizations Code and the “internal affairs doctrine.” This, in turn, violates the Full Faith & Credit, Commerce and Due Process clauses.

“The internal affairs doctrine is a conflict of laws principle which recognizes that only one State should have the authority to regulate a corporation’s internal affairs—matters peculiar to the relationships among or between the corporation and its current officers, directors, and

shareholders—*because otherwise a corporation could be faced with conflicting demands.*” *Edgar v. MITE Corp.*, 457 U.S. 624, 645 (1982) (emphasis added). The Texas Supreme Court has adopted the internal affairs doctrine as have other Texas courts. *See State Farm Mut. Auto. Ins. Co. v. Lopez*, 156 S.W.3d 550, 557 n.7 (Tex. 2004) (quoting *Edgar*, 457 U.S. at 645); *In re Skyport Glob. Comms., Inc.*, 2011 WL 111427, at *15 (Bankr. S.D. Tex. Jan. 13, 2011) (“Under Texas choice of law rules, the internal affairs of an entity incorporated in Texas will be governed by the laws of Texas. By the same token, actions involving the internal affairs of a foreign corporation are governed by the law of the state of incorporation.”) (internal quotations and citations omitted); *Neff v. Brady*, 527 S.W.3d 511, 523 (Tex. App.—Houston [1st Dist.] 2017, no pet.) (“internal affairs doctrine provides that, with respect to foreign entities, the laws of the entity’s jurisdiction of formation govern its internal affairs”). The Fifth Circuit has recognized this as well:

Texas, like most other states, follows the “internal affairs doctrine.” That is, the internal affairs of the foreign corporation, “including but not limited to *the rights, powers, and duties of its board of directors* and shareholders and matters relating to its shares,” *are governed by the laws of the jurisdiction of incorporation.*

Hollis v. Hill, 232 F.3d 460, 464-65 (5th Cir. 2000) (emphasis added).

The Texas legislature chose to codify the internal affairs doctrine via the Texas Business Organizations Code in 2003, which sets forth specific rules for determining whether Texas law or the law of the place of formation of the foreign business entity applies. *See* Tex. Bus. Orgs. Code §§ 1.101–106 (“Determination of Applicable Law”). Given that Synod chose to incorporate in Missouri as LCMS, Inc., the codified portion of the internal affairs doctrine applicable here are Tex. Bus. Orgs. Code. §§ 1.102 and 1.105. Section 1.102 is entitled “Foreign Filing Entities” and provides:

If the formation of an entity occurs when a certificate of formation or similar instrument filed with a foreign governmental authority

takes effect, *the law of the state or other jurisdiction in which that foreign governmental authority is located governs the formation and internal affairs of the entity.*

Id. (emphasis added). Section 1.105 entitled “Internal Affairs” further elaborates:

For purposes of this code, *the internal affairs of an entity* include:

- (1) *the rights, powers, and duties of its governing authority,* governing persons, officers, owners, and members; and
- (2) matters relating to its membership *or ownership interests.*

Id. (emphasis added) The codified internal affairs doctrine facially applies to, and requires rejection of, the Report.

There is no dispute that Synod made the explicit choice over 100 years ago to formally incorporate as LCMS in Missouri, where it is located, under Missouri’s nonprofit incorporation law. As such it looked to, analyzed, and relied upon Missouri law in determining the legal consequences of that choice. That is a choice Texas’ internal affairs doctrine mandatorily respects as a matter of public policy. This explicitly includes the avoidance of the very risk created by the Report: that a corporation relying on the laws of its state of incorporation in organizing its internal affairs “could be faced with conflicting demands” from foreign jurisdictions attempting to impose their corporations law on those internal matters. As one commentator explained in words which appear to almost have been written for this case:

Under the prevailing conflicts practice, neither courts nor legislatures have maximized the imposition of local corporate policy on foreign corporations *but have consistently applied the law of the state of incorporation to the entire gamut of internal corporate affairs. In many cases, this is a wise, practical, and equitable choice. It serves the vital need for a single, constant and equal law to avoid the fragmentation of continuing, interdependent internal relationships.*

The *lex incorporationis*, unlike the *lex loci delicti*, is not a rule based merely on the priori concept of territoriality *and on the desirability*

of avoiding forum-shopping. It validates the autonomy of the parties in a subject where the underlying policy of the law is enabling. It facilitates planning and enhances predictability. In fields like torts, where the typical dispute involves two persons and a single or simple one-shot issue and where the common substantive policy is to spread the loss through compensation and insurance, the preference for forum law and the emphasis on the state interest in forum residents which are the common denominators of the new conflicts methodologies do not necessarily lead to unacceptable choices. ***By contrast, applying local internal affairs law to a foreign corporation just because it is amenable to process in the forum or because it has some local shareholders or some other local contact is apt to produce inequalities, intolerable confusion, and uncertainty, and intrude into the domain of other states that have a superior claim to regulate the same subject matter....***

Kozyris, *Corporate Wars and Choice of Law*, 1985 Duke L.J. 1 at 98 (emphasis added). This prohibition is of particular import here given that when Synod chose to incorporate Missouri had no “uniform unincorporated nonprofit associations act” and since then is one of the many states to have eschewed UUNAA and its amended versions despite multiple opportunities to adopt them.⁷

This is not merely a Texas state law issue, but also implicates the Full Faith & Credit, Commerce and Due Process clauses of the United States Constitution for the same reason. *See Ord. of United Com. Travelers of Am. v. Wolfe*, 331 U.S. 586, 614 (1947) (“[T]he full faith and credit clause requires controlling effect be given to the law of the state of incorporation in interpreting and determining the enforceability of the rights and obligations of members contained in the by-laws of such societies.”); *Rogers v. Guaranty Trust Co. of New York*, 53 S.Ct. 295, 297 (1933). As explained by the Supreme Court of Delaware:

Given the significance of these considerations, application of the internal affairs doctrine is not merely a principle of conflicts law. ***It is also one of serious constitutional proportions—under due process, the commerce clause and the full faith and credit clause—***so that the law of one state governs the relationships of a corporation to its stockholders, directors and officers in matters of

⁷ See, <https://www.uniformlaws.org/committees/community-home?CommunityKey=40227d3a-8b5d-47c2-8cd0-b0ec12da97f9> which identifies the states adopting UUNAA or one of its subsequent versions.

internal corporate governance. *The alternatives present almost intolerable consequences to the corporate enterprise and its managers. With the existence of multistate and multinational organizations, directors and officers have a significant right, under the fourteenth amendment's due process clause, to know what law will be applied to their actions.*

McDermott Inc. v. Lewis, 531 A.2d 206, 216 (Del. 1987) (emphasis added).⁸

As a matter of Texas law, the Texas Legislature's choice in 1995 to enact TUUNAA is irrelevant to this dispute and it cannot be imposed here. Courts applying Texas law are required to apply the law of the state of incorporation in analyzing the internal affairs and structure of that organization including with regard to distribution of authority and property rights. Yet the Report recommends the opposite in violation of Texas law, and federal Constitutional law, and would constitute a particularly egregious error if adopted given that to this day Missouri has maintained its preference that UUNAA not become part of Missouri corporations law. The fact that the Texas legislature decided otherwise means nothing to this dispute, as a matter of Texas' own laws, and cannot be imposed on LCMS over a century after its decision to incorporate.

II. Objection to the Report's Rejection and Restructuring of the Polity and Governance of LCMS in Violation of the First Amendment and the Church Autonomy Doctrine.

The Report's declaration that Synod is an unincorporated nonprofit association civil law entity answerable to the secular authority of man, rather than an ecclesial body directed by and answerable to the Word of God, patently violates well-settled First Amendment law and tramples upon areas the Church Autonomy Doctrine renders inviolate. If adopted, the Report's recommendation would completely rewrite and restructure the chosen polity and governance of a religious organization.

⁸ See *In re Aguilar*, 344 S.W.3d 41, 47 (Tex. App. – El Paso 2011) (recognizing that “Delaware has been described as ‘the Mother Court of corporate law’” and that Texas and “courts throughout the country look to Delaware for guidance on matters of corporate law.”)

A. The Church Autonomy Doctrine Protects Churches From Court Interference With Church Polity and Governance.

The United States Supreme Court and the courts of Texas have long recognized and applied the Church Autonomy Doctrine to prohibit judicial inquiries into and entanglements with several recognized areas reserved exclusively to religious organizations. This includes a right protected and currently threatened by virtue of the Report: that civil courts not inquire into, question, or change church polity and governance.⁹ The Supreme Court has repeatedly re-confirmed this strict prohibition as the law of the land. *See Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 708-724 (1976) (church autonomy “applies with equal force to church disputes over church polity and church administration.”); *Presbyterian Church v. Mary Elizabeth Blue Hull Mem’l Church*, 393 U.S. 440, 449-51 (1969) (civil courts may not interpret and weigh church doctrine); *Kreshik v. St. Nicholas Cathedral*, 363 U.S. 190, 191 (1960) (per curiam) (First Amendment prevents judiciary, as well as legislature, from interfering in ecclesiastical governance of Russian Orthodox Church); *Kedroff v. Saint Nicholas Cathedral*, 344 U.S. 94, 116 (1952) (religious organizations retain the autonomous “power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine”); *Md. & Va. Eldership of Churches of God v. Church of God at Sharpsburg, Inc.*, 396 U.S. 367, 369 (1970) (Brennan, J., concurring) (“To permit civil courts to probe deeply enough into the allocation of power within a church so as to decide where religious law places control over the use of church property would violate the First Amendment in much the same manner as civil determination of religious doctrine.”).

⁹ “Polity refers to the general governmental structure of a church, the organs of authority and the allocation and locus of its judicatory powers as defined by its own organic law.” *Brady v. Reiner*, 198 S.E.2d 812, 827 (W.Va. 1973); *see also* Note, *Judicial Intervention in Disputes Over the Use of Church Property* (1962) 75 Harv.L.Rev. 1142, 1143-1144.)

As the Supreme Court explained in *Our Lady of Guadalupe School v. Morrissey-Berru*, 591 U.S. 732, 746 (2020), the Church Autonomy Doctrine and the compulsory abstention from “matters of church government [] does not mean that religious institutions enjoy a general immunity from secular laws, **but it does protect their autonomy with respect to internal management decisions that are essential to the institution's central mission.**” (emphasis added) That is scenario here and it risks stripping from LCMS that autonomous First Amendment right.

Milivojevic is particularly instructive and apt. There the Illinois Supreme Court attempted to interfere with and prevent the re-organization of the American-Canadian Diocese as three separate Dioceses as a matter of governance and polity. In that context the Supreme Court held the First Amendment permits religious organizations “**to establish their own rules and regulations for internal discipline and government**” and therefore civil authorities must defer to decisions by such bodies “on matters of discipline, faith, **internal organization, or ecclesiastical rule, custom, or law.**” *Milivojevic*, 426 U.S. at 713, 724 (emphasis added). The Supreme Court went on to identify three practical bases for this First Amendment prohibition.

First, civil courts cannot delve into ambiguities in canon law or church documents or the manner in which a religious organization adheres to them. *Id.* Second, civil judges are understandably not trained in canon law and theological interpretation and thus are not competent to judge such matters. *Id.* at 714 n. 8. Third, the “[c]onstitutional concepts of due process, involving secular notions of ‘fundamental fairness,’” cannot be borrowed from secular law and grafted onto a church’s polity to modernize and remake the rules followed by church judicatories. *Id.* at 714-15. Ultimately the Supreme Court reversed the Illinois Supreme Court’s undoing of the diocesan reorganization at issue, holding that Illinois had impermissibly “delved into the various church constitutional provisions” relevant to “**a matter of internal church government, an issue**

at the core of ecclesiastical affairs.” *Id.* at 721 (emphasis added). As the Court explained, the enforcement of church documents and terms, often unclear to a civil judge, cannot be accomplished “without engaging in a searching and therefore impermissible inquiry into church polity.” *Id.* at 723.

The Texas Supreme Court has also applied these controlling decisions with language critical to the issues before the Court here. *See e.g. In re Lubbock*, 624 S.W.3d 506, 513 (Tex. 2021) (Texas courts “cannot hear church disputes over church polity and church administration, or claims involving a religious organization’s internal discipline and government.” *quoting Milivojeovich*, 426 U.S. at 710, 724); *C.L. Westbrook, Jr. v. Penley*, 231 S.W.3d 389, 399 (Tex. 2007) (“the principle of judicial deference is not limited to disputes over church property, but ‘applies with equal force to church disputes over church polity and church administration.’” *quoting Milivojeovich*, 426 U.S. at 710).

Courts have also applied these constitutional restrictions specifically to the polity and governance of Lutheran Church – Missouri Synod, determining that a thorough review of its governance documents, organizational structure and distribution of powers and authorities would necessarily violate the First Amendment and the Church Autonomy Doctrine. *See Grace Evangelical Lutheran Church of River Forest v The Lutheran Church – Missouri Synod, Inc.*, 454 N.E.2d 1038, 1043 (Ill. App. Ct. 1983) (“But in this cause for the trial court or this court to impose such a trust would require precisely the kind of searching inquiry into religious doctrine which the courts are forbidden to undertake. Fundamentally, the Synod’s equitable arguments in favor of imposing such a trust are grounded in the contention that Grace was not justified in withdrawing from the Synod. But such a determination would involve the searching evaluation of matters of doctrine and church practice that this court cannot make.”); *Werling v. Grace Evangelical Lutheran*

Church of River Forest, 487 N.E.2d 990, 993 (Ill. App. Ct. 1985) (Referring to the LCMS governance documents “[t]here, the court found that it could not determine the Synod’s polity without intrusive scrutiny. Here, the ambiguity of the locus of the church’s control requires a careful examination of church documents and history in order to ascertain the church’s form of government.”).

B. The Report Violates The Church Autonomy Doctrine.

The Report, if adopted, would run afoul of the Church Autonomy Doctrine. The First Amendment ramifications of the Report are severe. Synod’s chosen polity and governance structure permissibly compartmentalizes the ecclesiastical and spiritual matters of the global congregations for the Synod’s purview while, on the other hand, creates LCMS to engage and interact with civil secular society on all other matters, including this lawsuit. The Constitutional right to do this is inviolate.

Structuring a religious organization so that it has an ecclesiastical arm contemporaneous with a civil law arm for dealing with contracts, the local/state/federal governments, and the courts is hardly novel. Nor is it unlawful. *See Folwell v. Bernard, By and Through Bernard*, 477 So.2d 1066, 1063 (Fla.App. 2nd Dist.1985), 486 So.2d 595 (1986) (“When a religious society incorporates, it assumes a dual existence; [] the church, which is conceived and endures wholly free from the civil law, and the other, the corporation [] [t]he components of the ecclesiastical interrelationship between the parent church and the subordinate body cannot be permitted to serve as a bridge capable of reaching the non-secular parent in a civil proceeding.”); *Trinity Presbyterian Church of Montgomery v. Tankersley*, 374 So.2d 861, 866 (Ala.1979) (“Stated otherwise, there is a spiritual church and a secular legal corporation, each separate though closely connected. Each entity has a separate purpose. Questions involving the spiritual church are ecclesiastical in nature,

and civil courts cannot decide any questions concerning this entity. In contrast, the secular corporate entity is formed by the state and performs civil functions, e. g., holding title to church property, and is in no sense ecclesiastical in its function; therefore, civil courts can decide questions concerning the corporation.”); *see also Willis v. Davis*, 323 S.W.2d 847, 848 (Ky.1959) (“Such corporation is civil in nature and is an entity distinguishable from an ecclesiastical society or association, the one having jurisdiction over the temporal or secular and the other over ecclesiastical or spiritual affairs.”)). *See also* 66 Am.Jur.2d Religious Societies § 5.

Significantly, this ecclesiastical/civil law duality generates no friction between religious organizations and the civil laws of this nation. The Report cannot make the same claim. Particularly when, as here, LCMS as the civil/secular section of the church’s governance structure and polity is a willing party and is available to both sue and be sued. The Magistrate’s Report, if adopted, would reject these well settled and non-discretionary precepts by rejecting Synod’s own polity and governmental structure in favor of a new one created by a secular court. The Magistrate cites no authority in support of his decision to create a second contemporaneous civil entity in violation of church law, whether as a jurisdictional ruling or otherwise. Instead, the Report fails to address First Amendment issues at all.

This is error. The Court is required to apply the Church Autonomy Doctrine, accept the polity and governance of the Synod/LCMS as it finds it, and apply it to the dispute. As the Supreme Court and Texas courts interpreting that authority make clear, this Court may not even excessively inquire into or entangle itself in those issues. Let alone gut, disregard and attempt to re-structure that governance and polity in the name of manufacturing jurisdiction.

Regardless, the Report now makes a more immersive discussion of Synod/LCMS polity and governance a necessity. To that end, LCMS attaches the Declaration of Rev. Dr. John W. Sias

(the “Polity Statement”) which sets out the history, doctrinal concerns and interplay of hierarchical and congregational structures which underpin the unique governance and polity developed by church. (A copy of the Polity Statement is attached as **Exhibit 1**.)

When the Synod was founded in 1847 its members established this unique polity based on two doctrinal convictions. (*Id.* at ¶ 2.) First, that the Bible, the Word of God and the Lutheran Confessions, rather than the “word of man” should rule *within the churches* of the Synod and over their common endeavors. (*Id.* at ¶ 3.) The second doctrinal foundation is rooted in Synod’s devotion to congregational autonomy which is rooted in Christ’s having vested the spiritual authority of the church in the congregations. (*Id.* at ¶ 4.) As such, the Synod’s relationship to its congregations is purely advisory and limited to ecclesial matters.

To carry out their doctrinal convictions the congregations exercise their authority collectively acting in convention by adopting regulations and resolutions which direct the Synod in these religious affairs, including common endeavors for and on behalf of the congregations. (*Id.* at ¶ 5.) However, the actual practice of religion in these endeavors, including establishing higher education institutions to produce pastors, teachers and other church workers, involves acquiring and owning property, employing workers, and managing assets. (*Id.* at ¶ 9.)

Due to this, the Synod has established civil law entities to operate in and interact with secular society, such as courts. The primary civil law entity established for these purposes is now titled The Lutheran Church—Missouri Synod, the proper Plaintiff here. This Missouri corporation, created in 1894, has a board of directors charged to supervise and oversee property, business, and legal affairs. (*Id.* at ¶ 10.) Synod/LCMS maintains and adheres to this polity and governance structure also to preserve the purely ecclesiastical authority of the congregations and Synod and, subject to that authority, actual practice of religion in common Synod endeavors.

The Report's recommendation would re-write, re-imagine, and restructure that which the Synod built based on its doctrinal understandings and application of the word and will of God as it understands it. This is constitutionally impermissible. As a matter of the Church Autonomy Doctrine and the neutral principles approach, the Court must not avoid these questions of polity and governance as the Report appears to have mistakenly done, but rather accept them as binding and inviolate when rendering the civil law determinations that are within its secular purview.

III. Additional Objections to the Content of and Omissions from the Report.

Based on the foregoing authorities and arguments, LCMS objects to the entirety of the findings and recommendations of the Report as all flow from rationales that violate the Texas and federal laws discussed above. The Report advises that the "party filing objections must specifically identify those findings or recommendations to which objections are being made." (Doc. 52-18.) The Report does not identify any specific "findings," *per se*. Regardless and to be thorough, and to the extent not otherwise clear or covered by the above objections, LCMS objects to the following based on the foregoing authorities and arguments as well, and on the basis the following statements and the foregoing recommendations violate the United States Religious Freedom and Restoration Act, the Texas Constitution and the Texas Religious Freedom and Restoration Act:

- LCMS objects to Page 7 of the Report where the Magistrate Judge concluded, "... the Synod holds the substantive rights at issue here." The Synod, a purely ecclesiastical religious entity, incorporated LCMS as its civil law entity to assert and respond to all civil law claims. The Report supports this baseless conclusion with an impartial quote that LCMS filed the lawsuit "on behalf of itself and Synod" troublingly leaving out the three words – "its ecclesiastical denomination." Moreover, the Report's insistence on looking only at a fragment of an allegation while ignoring wholesale the church governance documents explaining the allegation and the

affidavit of Rev. Sias illustrates the Magistrate’s misunderstanding of neutral principles and the Church Autonomy Doctrine.

- LCMS further objects to Page 7 of the Report, where the Magistrate concluded, “To the extent LCMS asserts rights with respect to any Defendant, those rights are the Synod’s.” In support the Magistrate simply quotes a statement that LCMS is the civil law entity that interacts with the judicial system in place of the ecclesiastical body of the Synod. For the reasons and authorities cited above, this is of no moment. Not only may Synod incorporate LCMS for these purposes, it is the preferred practice as a matter of public policy and the Magistrate’s attempt to strip that right violates Texas secular law, several clauses of the United States Constitution, the First Amendment, the Religious Freedom and Restoration Act, the Texas Constitution and the Texas Religious Freedom and Restoration Act.

- LCMS objects to Page 8 of the Report where the Magistrate concluded, “...given that the Synod is an unincorporated association”; Page 13 which similarly states “the Synod is an unincorporated association. As such, it is a citizen of every state in which its members reside” including Texas; and numerous similar statements on Page 16. Synod is not an unincorporated association. It has never been one. And both Texas and federal Constitutional law do not permit this Court to make it one by judicial fiat when it is already formally incorporated as LCMS in Missouri.

- Similarly, LCMS objects to Page 15 of the Report, where the Magistrate Judge concluded, “The Synod has capacity to sue and be sued under Texas law. Whether an entity has capacity to be sued depends on whether or not it is a corporation.” This is yet another consequence of the Report’s misunderstanding and misapplication of TUUNAA.

- LCMS objects to Page 13 of the Report where the Magistrate concluded, “First, LCMS cannot show that the Synod is not a citizen of Texas for the purposes of diversity jurisdiction. Neither party offers any evidence other than that contained in the Synod’s governing documents regarding its citizenship.” The LCMS provided the affidavit of the Reverend John Sias to support its contention the Synod is not an unincorporated association which was disregarded in whole. Moreover, the governing documents do establish that LCMS is a Missouri nonprofit corporation which, even more fundamentally, is not even a fact in dispute.

- LCMS objects to the following statement on Page 16 of the Report: “Regardless of its organizational relationship to LCMS, the Synod is a non-corporation, non-individual “party” to the 2024 suit, and as such, whether it may be sued depends on Texas law.” Based on the foregoing arguments and authorities this statement significantly departs from what Texas corporate law actually provides and the statement expressly rejecting the import of LCMS “organizational relationship” to Synod illustrates a fundamental misunderstanding of the First Amendment, church governance, administration, and polity.

- LCMS relied extensively on the Declaration of Rev. Dr. John Sias, who serves as Secretary for LCMS. *See* Response to Motion to Dismiss at Exhibit 1 (Doc. 23-1). LCMS cites Dr. Sias’s declaration as support for its arguments that Synod does not exist as a separate civil entity from LCMS and explains ecclesiastical meanings in the governance documents. (Doc. 23-1 at ¶¶ 4-5.) Yet Dr. Sias’s declaration is not even mentioned in the Report, underscoring the Magistrate’s misapplication of neutral principles and the Church Autonomy Doctrine. Further, not only is it not mentioned, but the Report misrepresents the record by stating that LCMS offered no “evidence other than that contained in the Synod’s governing documents regarding its citizenship.” (Doc 52-13.)

CONCLUSION

LCMS requests the Court Grant its Objections to the Magistrate's Report and Recommendations [Doc. 52] because it is incorrect and clearly diversity in this case exists, Deny the underlying Motion to Dismiss [Doc. 13], and Deny the Motion to Remand consolidated herewith [Doc. 5] and for such other relief in law and equity that the Court determines is in the best interest of justice.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion was served on December 20, 2024 to all counsel of record listed below:

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DECLARATION OF REV. DR. JOHN W. SIAS

STATE OF MISSOURI §
COUNTY OF ST. LOUIS §

**The Polity of The Lutheran Church—Missouri Synod
based on Doctrine and Historical Practice**

1. My name is Rev. Dr. John W. Sias. I am over the age of eighteen (18) years and fully competent in all respects to make this Declaration. I have personal knowledge of the facts stated herein and they are true and correct.

2. The original members¹ of The Lutheran Church—Missouri Synod (“the Synod”)² fled a German state church that had forced—in the interest of the state—those holding incompatible beliefs to worship together as though they were unified in their beliefs. In America, they realized—through personal experience and interactions with others—the dangers of concentrating power to impose organizational regulations on congregations that should be free. Nonetheless, they understood their faith called them to common endeavor. Thus, at the founding of the Synod in 1847, the members established a unique polity—to which the Synod still adheres and diligently pursues, and which is the form of governance before the Court— based on two principal doctrinal convictions:

3. First, the Scriptures are the Word of God, and the Lutheran Confessions³ are a “true and unadulterated statement and exposition of the Word of God” (Const. Art. II). This Word of God, which is clear and gives light—and not the word of any man or men—should rule in the churches (Const. Art. VIII C). C.F.W. Walther, the Synod’s founding president, describes the church as: “not of this world” (John 18:36); existing “to bear witness to the truth” (John 18:37); and free (Gal. 4:26) (Walther, “The Synod Has No Power But the Word of God,” 1848 Synodical Address (the “Address”)). A true and correct copy of the Address is attached as Exhibit A. He further describes the church as a kingdom in which Christ has all the power as King (John 18:37), *the Good Shepherd* (John 10:11, 14), the “One [who] is your Master, even Christ” (Matt. 23:8, 10), and the “head over all things to the church” (Eph. 1:22–23). The means of Christ’s rule

¹ Membership in the Synod is held and may be acquired by congregations and individuals, ministers of religion—ordained ministers of religion—commissioned, of the Evangelical Lutheran Church who confess and accept the confessional basis of the Synod confession. (Const. Art. V) The congregations, represented by pastoral and lay delegates, are the voting members of the Synod (Const. Art. V A, IX).

² The present name, since 1947; at its founding, the church body was called “*Die deutsche evangelisch-lutherische Synode von Missouri, Ohio, und andern Staaten*” or “The German Evangelical Lutheran Synod of Missouri, Ohio, and Other States.”

³ These are: “All the Symbolical Books of the Evangelical Lutheran Church as a true and unadulterated statement and exposition of the Word of God, to wit: the three Ecumenical Creeds (the Apostles’ Creed, the Nicene Creed, the Athanasian Creed), the Unaltered Augsburg Confession, the Apology of the Augsburg Confession, the Smalcald Articles, the Large Catechism of Luther, the Small Catechism of Luther, and the Formula of Concord.” (Const. Art. II)

in the church—and in the Synod—is “the Word, accompanied and sealed by the Holy Sacraments (Matt. 28:18–20). *Id.*

4. Second, the congregations, because they have the Word and the Sacraments, are the “rightful possessor[s] of all rights and powers that Christ has procured for and given to his church” (Walther, *Church and Office*, Church Thesis VII (the “Thesis”)). A true and correct copy of the Thesis is attached as Exhibit B. They and not officers or institutions are the original possessors of spiritual authority in the church. The Synod’s relationship to its congregations is therefore purely advisory (Const. Art. VII), intentionally having “only the power of Word [of God], and of convincing.” (Walther, 1848 Synodical Address, *op. cit.*)

5. Thus, the Synod is non-hierarchical and has no directive power over its member congregations, recognizing that they, not it, are the seat of church authority. Through the Synod, the congregations, the original possessors of spiritual authority, exercise their authority collectively (acting in convention by adopting regulations and resolutions) to direct the work the Synod and its agencies do as extensions of their own ministry, for them and on their behalf (Bylaws 1.3.3, 1.4.1).

6. In an address at the 1896 Synod convention (the convention that ratified the Synod’s Articles of Incorporation, their having been filed at the convention’s prior direction in 1894), Francis Pieper, a foremost theologian and later president of the Synod, called church government a *doctrine*, rooted in the *doctrine of the church*, identifying as its means of government the Word of God, and as its master, Christ alone (Matt. 23:8). The church, while subject to civil authority in civil matters (Rom. 13:1), does not accept “any commandments from secular authorities in ecclesiastical matters.” (Pieper thanks God for the “separation of church and state...which exists in this country.”) The church also does not accept imposition of human rules from those in the church who presume to have any power other than that given by Christ to the congregation. (F. Pieper, “*Kirche und Kirchenregiment*,” in *Proceedings* (23), 1896). A true and correct copy of the Proceedings is attached as Exhibit C.

7. Toward the end of his address, Pieper asks, “**Why, then, have a Synod, if God’s Word is enough?**” He answers that question by saying, “**Through the Synod, we want to be helpful to one another so that God’s Word, and nothing other than God’s Word, governs among us.**” “**The purpose of our Synod community is stated in our Synod *Handbook*, among other things: ‘preservation and promotion of the unity of the pure confession’ [and] ‘supervision of the unity and purity of doctrine.’...The ecclesiastical institution of the Synod is not intended to establish a dominion alongside and beyond the Word of God, but rather the entire Synod institution is to serve the sole dominion of the Word of God.**” (F. Pieper, *op. cit.*) (emphasis added).

8. The Synod has thus established offices of ecclesiastical supervision to “conserve and promote the unity of the true faith” and “provide a united defense against schism, sectarianism (Rom. 16:17), and heresy” (Const. Art. III) among its congregations and agencies. The president is assigned (with various mechanisms) to exercise “supervision regarding the doctrine and administration” of the synodical enterprise, “to see that all the aforementioned act in accordance with the Synod’s Constitution, to admonish all who in any way depart from it, and, if such admonition is not heeded, to report such cases to the Synod” (Const. Art. XI B 1–3). Bylaws elaborate further means of doctrinal regulation of Synod agencies. Special attention is given to the synodical institutions of higher education, in part because they produce pastors,

teachers, and other church workers for the service of member congregations (Const. Art. III 3, 5; Bylaws 3.3.1.1.1 (c), 3.3.1.2 (a), 3.6.6–3.6.6.1, 3.10.6–3.10.6.1, etc.).

9. The Synod is unable to carry out its mission in the world while remaining strictly in a spiritual plane. Actual practice of religion, including establishing higher education institutions to produce pastors, teachers and other church workers, involves acquiring and owning property, employing workers, and managing assets. Therefore, the Synod has established civil law entities (Const. Art. IV).

10. Foremost among these is the entity now titled The Lutheran Church—Missouri Synod (“LCMS, Inc.”) (“Inc.” is not part of the official corporate name, which is shared identically with the name of the “Synod,” “The Lutheran Church—Missouri Synod.”) This Missouri corporation, created in 1894, has a board of directors charged to supervise and oversee property, business, and legal affairs. A true and correct copy of the 1894 Articles of Incorporation are attached as Exhibit D. LCMS, Inc. was created “with the view to fully carrying out the original objects of [Synod’s] creation [in 1847] and the more readily to continue and perpetuate its labors” (1894 Art. of Inc. Preface); to “unite in a corporate body the members...who remain true to and acknowledge as a true exhibition of sound Christian doctrine the Book of Concord...; to receive, acquire, hold, manage and control the real and personal property and franchises which may hereafter be acquired by this corporation and such as have heretofore been obtained and are now held by different educational corporations, under its direction and for its advancement; and to continue and perpetuate the good work of disseminating the Gospel throughout the world” (1894 Art. of Inc., Art. II). *Id.*

11. Through LCMS, Inc., and other civil law structures established for particular purposes (such as Concordia Plan Services, which administers worker benefit plans), the Synod keeps the tangible means of its common work subject to its doctrine and the decisions of its congregations. It also explicitly “acknowledge[s] its responsibility to be subject to civil authority [through its civil law entities]... [, and] intends to retain all authority and autonomy allowed a church under the laws and Constitution of the United States and the State of Missouri” (Bylaw 1.2.1 (f)(2)).

12. In addition to the convention of its membership, which is the supreme authority of the Synod, subject only to the Word of God, the Synod has its own judicatory body for interpreting the Constitution, Bylaws, and resolutions of the Synod, whose decisions are binding (Bylaw 3.9.2.2). This serves as the Synod’s internal means of dealing with “any conflict or uncertainty in determining the authority and duties of officers and agencies⁴” within the overall governance of the Synod (Art. of Inc. V).

13. The polity as here described is a matter of the ecclesiastical autonomy of the Synod to facilitate ecclesiastical governance through religiously informed conscience.

⁴ An “agency” is an instrumentality other than a congregation or corporate Synod, whether or not separately incorporated, which the Synod in convention or its Board of Directors has caused or authorized to be formed to further the Synod’s Objectives (Constitution Art. III).

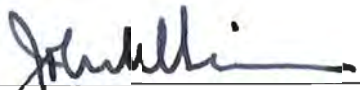
(1) Agencies include each board, commission, council, seminary, university, college, district, Concordia Plan Services, and each synodwide corporate entity.

(2) The term “agency of the Synod” does not describe or imply the existence of principal and agency arrangements as defined under civil law. (Bylaw 1.2.1)

14. The Synod has no bank accounts, owns no real property and has no civil law interests. LCMS, Inc., is the incorporation of the Synod and it is LCMS, Inc. that is responsible for temporal matters that may relate to the functioning of the Synod in the civil law realm. LCMS, Inc. owns property, both real and personal, and engages in all types of other civil law interests.

15. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on December 20, 2024.



The Rev. Dr. John W. Sias

Exhibit A

At Home in the **HOUSE OF MY FATHERS**

Presidential Sermons, Essays,
Letters, and Addresses from
the Missouri Synod's Great Era
of Unity and Growth

By Matthew C. Harrison



Permission from Concordia Publishing House to reprint C. F. W. Walther, "Duties of an Evangelical Lutheran Synod," trans. Everette Meier, in *Essays for the Church* (St. Louis: Concordia Publishing House, 1992), 6–63, is gratefully acknowledged.

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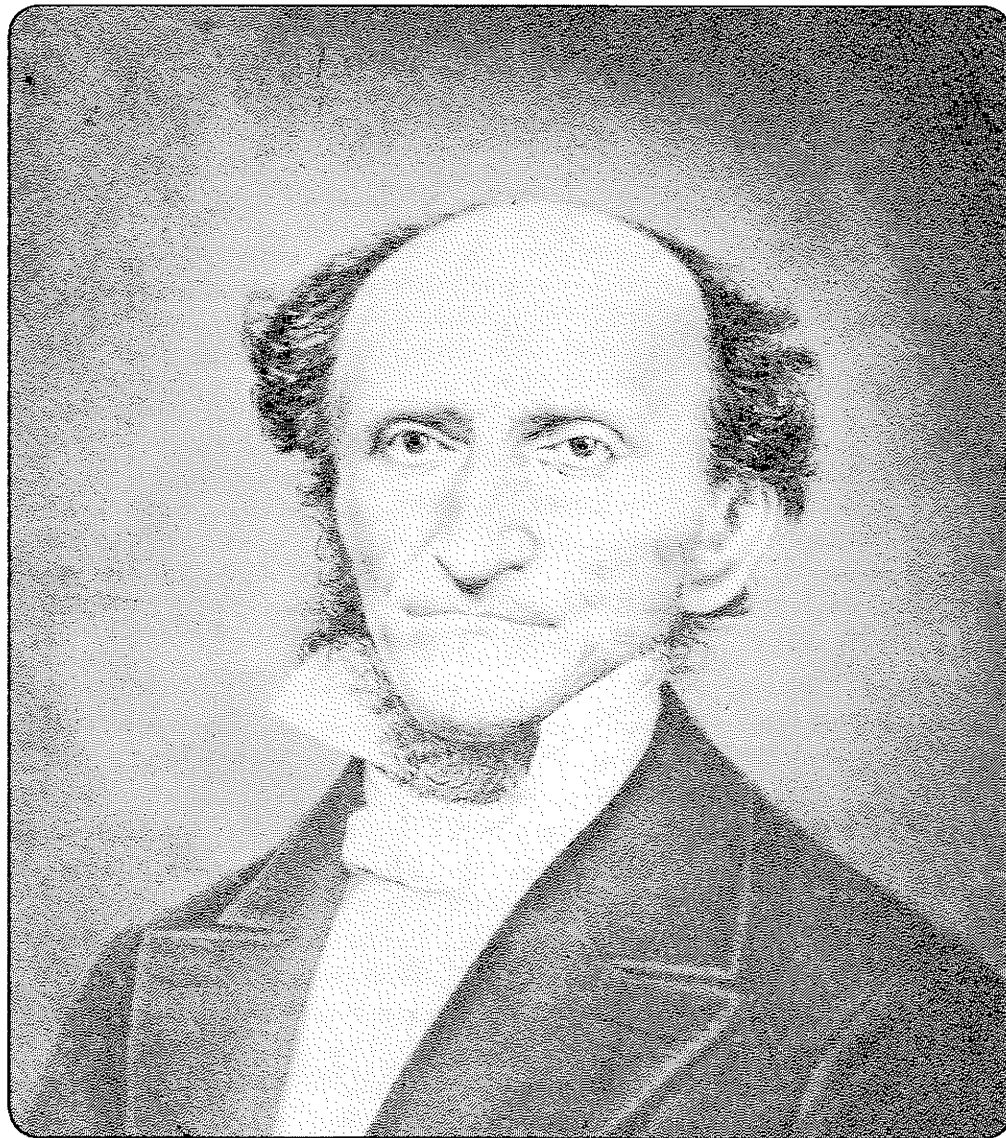
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To my father,
CARL HARRISON



CARL FERDINAND WILHELM WALTHER (1811–1887)
First President of the Missouri Synod: 1847–1850, 1864–1878

The Synod Has No Power But the Word of God 1848 Synodical Address

By C. F. W. Walther
Translated by Paul F. Koehneke

Today our life together in the Synod seems to be dominated by bylaws, CCM rulings, and sometimes even lawyers and civil court decisions, or at least the fear of civil action—all to our shame. Are we still the Church of the Word of God? Do we still believe the Word of God? Are we the Church of the Lutheran Reformation? Do we believe in sola scriptura, or rather sola structura? After so many years of strife, political activity, and division, our only hope for unity is to regain Walther's vision of a synod that knows no unity by compulsion, by human regulations and laws. The Synod has only the power of the Word of God. Where the Word is silent on a matter, there is freedom ruled by love. God grant us repentance so that the endless wrangling over bylaws gives way to a never-ending love for God's inerrant Word. We shall find unity again as we humbly and avidly join together in deep repentance and reverent consideration of the Word of God. "To be sure, there are matters which the Word of God does not regulate, but which must be arranged in the Church. But all such matters are not to be arranged by any power above the congregation, but the congregation, that is, pastors and hearers, arranges them, free of every compulsion, as it is necessary and appears salutary." As Walther says, "We have only the power of the Word." Anything else ends in coercion, and the result is division.

This essay is from Dr. Walther's First Presidential Address, translated by the Rev. Prof. Paul F. Koehneke, Concordia Historical Institute Quarterly 33, no. 1 (April 1960): 12–20. I have updated the translation slightly. —M. H.

Long Jesus Christ, with us here sta. 2

IN THESE LAST DAYS OF SORE DISTRESS, there have again come days of great joy, days of refreshment and strengthening for us, members and servants of the Evangelical Lutheran Church of this country. God has granted us grace that we, who knew and know that we are united in one faith, but in part were not acquainted, and in most cases lived a great distance from one another and had to work and battle alone, have been able to meet here to manifest our unity in the Spirit publicly by deeds and jointly to strengthen this unity, to confess our most holy faith jointly, and to be edified thereby, jointly to take upon ourselves the burden of the individual, and to present it to God in joint prayer. Whereas at present our fellow believers in most other countries, especially in our former

fatherland, because of the disturbance and confusion of a violent dissolution of all existing relationships in Church and state, are restricted almost entirely to solitary sighing in the closet, we have been able to assemble peacefully to refresh our spirits in the shadow of an undisturbed peace.¹ Thanks, humble thanks, be to Him who is good and whose mercy endureth forever.

However, we are here not only as individuals; most of us have come here as servants and members of the Church in the name and on behalf of our congregations, in order to deliberate in the fear of God on matters necessary for them and the Church as a whole. We are bearing a grave responsibility in being present here, in the confession that we make and in the resolutions we pass. The eyes of many are on us; they are looking upon our deliberations partly with concern, partly with expectation. Generally, however, the demand is made upon our meeting—and, we must admit, with perfect justification—that it is not only to be beneficial for us personally, but that it also brings a blessing upon our congregations and the whole Church.

I do not doubt for a moment that all of you, my dear brethren in Christ, have come here with the fervent prayer to God for such a blessing upon our activity and with the holy purpose, as members of this body, to consider such a blessing the goal of your activity. Perhaps all of us, the one more, the other less, are filled with concern by the thought that our deliberations might easily be unproductive; I mean the thought that, according to the constitution under which our synodical union exists, we have merely the power to *advise* one another, that we have only the *power of the Word*, and of *convincing*. According to our constitution, we have no right to formulate decrees, to pass laws and regulations, and to make a judicial decision to which our congregations would have to submit unconditionally in any matter involving the imposing of something upon them. Our constitution by no means makes us a consistory, by no means a supreme court of our congregations. It rather grants them the most perfect liberty in everything, excepting nothing but the Word of God, faith, and charity. According to our constitution, we are not *above* our congregations, but in them and at their side. Have we not thereby been deprived almost entirely of the possibility of exercising an energetic, salutary influence upon our congregations? Have we not perhaps, by adopting a constitution as ours is, made ourselves a mere shadow of a synod? The relationship into which we have entered being what it is, shall we not exhaust ourselves with labors that may easily be lost entirely, since nobody is forced to submit to our resolutions?

You surely all join me in answering this question with a decided No! You need no proof for this, least of all *my* reasonings. I hope, however, that you will gladly lend me your ears, if I now, at the opening of this year's sessions, attempt to focus your attention for several moments on the topic I have suggested. Surely there is nobody among us who realizes

¹ Walther refers to the German revolution of 1848.

more vividly than I do how completely unfit I am to arise in this venerable assembly and teach among teachers; but it is incumbent upon me to take the floor because of the office you have seen fit to impose upon me, the least of you. Moreover, by means of several hints that I can present according to the measure of my knowledge and the meager preparation allowed me, I hope at least to stimulate you to meditate on this important matter to greater benefit.

The question to which I now intend to give a brief answer is the following:

Why Should and Can We Carry On Our Work Joyfully Although We Have No Power But the Power of the Word?

The principal and most important motive is the following: because Christ has *given* His servants only this and no other power, and because even the holy apostles have *appropriated* to themselves no other power and therefore have seriously *warned* the servants of the Church against claiming every other power.

In the first place, Christ declares plainly and distinctly that His Church is not of the same nature as a temporal state. In reply to the question of Pilate whether He was the King of the Jews, etc., He uttered the great important words: "My kingdom is not of this world. If My kingdom were of this world, My servants would have been fighting, that I might not be delivered over to the Jews. But My kingdom is not from the world" [John 18:36]. He indicates the real, the true character of His kingdom, of His Church, by adding: "*For this purpose* I was born and for this purpose I have come into the world—to bear witness to the *truth*. Everyone who is of the truth listens to My voice" [John 18:37]. It is also pertinent that Christ in other passages calls His kingdom a kingdom of *heaven* and that the holy apostles call it the house and city of God, the Jerusalem which is above, the *free* woman [Galatians 4:26], the Church of the firstborn which are written in heaven, and the like. Christ's kingdom and the Church, accordingly, is a kingdom of truth, a spiritual, heavenly kingdom, a kingdom of God, in which only free citizens of the kingdom of heaven, members of the house of God, prophets, priests, and kings dwell.

Who, then, has the *power* in this kingdom? It is Jesus Christ alone. He declares this of Himself. He says: "I am a king" [John 18:37]. "I am *the* good shepherd" [John 10:11, 14]. "One is your Master, even Christ" [Matthew 23:8, 10 KJV]. The apostle calls Him the "head over all things to the church, which is His body, the fullness of Him who fills all in all" [Ephesians 1:22–23]. The means by which Christ exercises the power in His Church, though He has withdrawn His visible presence from it and sat down at the right hand of the throne of the majesty in the heavens, is clearly shown by the last declaration with which He parted from His disciples: "*All authority* in heaven and on earth has been given to me. Go *therefore* and make disciples of all nations, baptizing them in the name of the Father and of the Son and of the Holy Spirit, teaching them to observe all that I have commanded you. And behold, I am with you always, to the end of the age" [Mat-

thew 28:18–20]. Hence His *Word*, accompanied and sealed by the Holy Sacraments, is the means whereby Christ exercises power in His kingdom. This is the “right scepter” with which He rules His people, this is the “rod and . . . staff” [Psalm 23:4] with which He feeds His flock.

But Christ not only declares that He alone has the power in His Church and exercises it by His Word, but He also expressly denies to all others any other power, any other rule, any other authority to command in His Church. Not only does He say, as already stated, “For you have one instructor, the Christ” [Matthew 23:8; *Luther Bibel*], but He also adds: “And you are all brothers,” that is, in My Church, you are all *equal*, all subject to Me, and no one the lord and commander of the other.

In another passage He says to the disciples: “You know that those who are considered rulers of the Gentiles *lord it over them*, and their great ones *exercise authority* over them. But it shall not be so among you. But whoever would be great among you must be your *servant*” [Mark 10:42–43].

What Christ hereby denied to the apostles, they never claimed for themselves. They demanded no submission except to Jesus Christ, namely, to His Word. They said: “We refuse to practice cunning or to tamper with God’s word, but by the open statement of the truth we would commend ourselves to everyone’s conscience in the sight of God. . . . For what we proclaim is not ourselves, but Jesus Christ as Lord, with ourselves as your servants for Jesus’ sake” [2 Corinthians 4:2, 5]. When, therefore, St. Paul, toward the end of the first chapter of his Second Letter to the Corinthians [1:23], had used the expression that he had not come to Corinth in person because he wished to “spare” his Corinthians, it might have seemed to some as though the apostle were thereby making himself a lord who had the power to demand and grant dispensation according to his pleasure, to punish and to spare; in order that this wrong impression might not become fixed, he immediately adds: “Not that we lord it over your faith, but we work with you for your joy” [2 Corinthians 1:24]. Again, when this same apostle had urged and admonished the congregation in Corinth to participate in a collection for the poor, he adds: “I say this not as a command, but to prove by the earnestness of others that your love also is genuine” [2 Corinthians 8:8]. Before this, when the Corinthians paid more attention to the persons than to the Word preached by these persons, he had testified to them: “What then is Apollos? What is Paul? Servants through whom you believed. . . . So let no one boast in men. For all things are yours, whether Paul or Apollos or Cephas or the world or life or death or the present or the future—all are yours, and you are Christ’s, and Christ is God’s” [1 Corinthians 3:5, 21–23]. Even at the election and appointment of officers to care for the physical needs of the congregations, the apostles therefore did not claim the right to choose these men alone. When the deacons were to be elected at Jerusalem, the apostles addressed the congregation in this manner: “Therefore, brothers, pick out from among you seven men of good repute, full of the Spirit and of wisdom, whom we will appoint to this duty. But we will

devote ourselves to prayer and to the ministry of the word” [Acts 6:3–4]. Then we read: “And what they said pleased the whole gathering, and they chose Stephen. . . . These they set before the apostles, and they prayed and laid their hands on them” [Acts 6:5–6]. Again, when, according to the report in Acts 21, the belief spread in the congregation at Jerusalem that Paul was an enemy of the Mosaic Law, and when he on his journey finally arrived at Jerusalem, James and the elders did not wish to take the responsibility of deciding the matter upon themselves, nor to force the congregation to be satisfied with their decision, but all the elders unanimously declared: “What is it therefore? The *multitude* must needs come together: for they will hear that thou art come” [v. 22 KJV]. Again, when, according to Acts 15, a dispute arose among the Christians in Antioch about the question whether Christians who had formerly been Gentiles would have to be circumcised and Paul and Barnabas were unable to soothe the divided multitude, the congregations elected them and several others and sent them to Jerusalem as their delegates to secure counsel at the place where not only Peter and James but also the greatest number of converted and noted Jews lived. What happened? The apostles and elders meet to consider the matter; but they do not dare to exclude the congregation in this matter. All members meet. There is argument and counterargument. Finally, Peter and James arise and place the matter in the right light. A joint resolution is then passed and included in the synodical letter, in which we read: “The apostles and elders and brethren It seemed good unto us, being assembled with one accord” [vv. 23, 25 KJV]. Thus we see that the apostles did not at all claim any dominion over the congregation. Even in the most important councils, they granted the so-called laymen just as much right, just as much seat and deciding vote, as themselves.

Therefore they also diligently and seriously warn all who have an office in the Church against all desire to rule. For instance, Peter writes: “So I exhort the elders among you, as a fellow elder . . . : shepherd the flock of God that is among you, exercising oversight, not under compulsion, but willingly, as God would have you; not for shameful gain, but eagerly; *not domineering over those in your charge*, but being examples to the flock” [1 Peter 5:1–3]. Likewise, Paul admonishes Timothy: “Do not rebuke an older man but encourage him as you would a father, [treat] younger men as brothers, older women as mothers, younger women as sisters, in all purity” [1 Timothy 5:1–2]. The holy apostles grant only *one* power to those who serve the Church as rulers, namely, the power of the Word. For thus the same apostles write; first, St. Peter: “Whoever speaks, as one who speaks oracles of God; whoever serves, as one who serves by the strength that God supplies—in order that in everything God may be glorified through Jesus Christ” [1 Peter 4:11]. Then St. Paul writes to Timothy: “Preach the word; be ready in season and out of season” [2 Timothy 4:2].

Accordingly, there can be no doubt, venerable brethren in office and respected delegates, that we are not renouncing any right belonging to us if we as servants of the Church and as members of an ecclesiastical synod claim no other power than the power of the Word. For in the Church where Christ alone rules, there dare and can be no other power

to which all must submit. To be sure, there are matters that the Word of God does not regulate, but which must be arranged in the Church. But all such matters are not to be arranged by any power above the congregation, but the congregation, that is, pastors and hearers, arranges them, free of every compulsion, as it is necessary and appears salutary.

What, then, are men doing who claim a power in the Church beside the power of the Word? They are robbing the Church of Christ of the liberty that He has purchased with a price, with His divine blood, and are degrading this free Jerusalem, in which there are only kings, priests, and prophets, this kingdom of God, this heavenly kingdom of truth, to an organization under strict police rule in which everybody is compelled to be obedient to every human ordinance. They are seeking the royal crown of Christ, the only true King, and are making themselves kings over His kingdom; they are deposing Christ, the only true Master, from His chair and are setting themselves up as masters in His Church; they are striving to separate Christ, the only true Head, from His Church and are presumptuously trying to be heads of His spiritual body. They exalt themselves above the holy apostles and claim a power that God's Word plainly denies them and which has been granted by God to no man, no creature, not even to an angel or archangel.

Can we, therefore, my brethren, be depressed because we in our American pastorates are endowed with no other power than the power of the Word and especially because no other power has been granted to this assembly? Most assuredly not. This very fact must arouse us to perform the duties of our office and to carry on our present labors with great joy; for in this manner, the Church also among us preserves its true character, its character of a kingdom of heaven. In this manner, Christ remains among us as what He is, the only Lord, the only Head, the only Master; and our office and labor preserves the true apostolic form. How could we lust for a power which Christ has denied us, which no apostle has claimed, and which would deprive our congregations of the character of a true church and of the true apostolic form?

Undoubtedly our congregations were *free* to follow this example and to invest the synod meeting in their name with a power beside the power of the Word. But it is a different question whether it would have been wise if they had done so. I say no, because under the prevailing circumstances, we can confidently hope for auspicious success of our work, or rather of God's work, which we are promoting, if we use only the power of God. This is the second reason why we should and can carry on our work with joy, although we have no power but the power of the Word.

Perhaps there are times and conditions when it is profitable for the Church to place the supreme deciding and regulating power into the hands of the representatives. Who, for instance, would deny that at one time, the consistories in our German fatherland were an inestimable blessing, especially when the prophecy of Isaiah was being fulfilled in the German Lutheran Church: "And kings shall be thy nursing fathers, and their queens thy nursing mothers" (49:23 KJV)? Which person acquainted a bit with history would deny

that the Swedish Church grew splendidly under its episcopal constitution, especially so long as men like Laurentius Petri,² the famous Swedish translator of the Bible and student of Luther, bore the episcopal dignity, and so long as men like the two Gustavuses³ wore the royal crown of Sweden? If, however, we glance at the conditions in which the Church finds itself *here*, we can hardly consider any other constitution as the most salutary except one under which the congregations are free to govern themselves but enter into a synodical organization such as the one existing among us with the help of God, for enjoying fraternal consultation, supervision, and aid to spread the kingdom of God jointly and to make possible and accomplish the aims of the Church in general.

It is true, if our congregations had granted us full power to decide and decree in their name, it apparently would have been easy for us to give all the congregations of our territory the form of truly Lutheran congregations, whereas with our present constitution, our hands appear to be tied. But this only seems to be the case. Even though some congregations may use the liberty they possess of rejecting our recommendations even if they are salutary, thereby they indeed deprive themselves of a blessing. But what would be the result if such congregations by their entrance into our organization had obligated themselves to submit to all of our orders? The exercise of our power would have laid the foundation for constant dissatisfaction, for constantly reviving fear of hierarchical efforts, and thus for endless friction. In a republic, as the United States of America is, where the feeling of being free and independent of man is nourished so strongly from childhood, the inevitable result would be that any restriction beyond the limits drawn by God Himself would be empty shells, and our apparent growth would often be nothing but a process of becoming stiff and dying in a great mass of lifeless forms. Our chief battle would soon center about the execution of manufactured, external human ordinances and institutions and would swallow up the true blessed battle for the real treasure of the Church, for the *purity and unity of doctrine*. In a word, we would lose sight of our beautiful aim of building the true Church, which is not an external scaffold but the kingdom of God in the heart of men, and at best ourselves bring about our early dissolution. To be sure, there are religious organizations in this republic that, in spite of their strictly representative form of government, are being built without antagonism and are prospering in their manner, but why? Because the congregations are not permitted to come to a knowledge of their liberty

² Brother of Olavus Petri. Born in 1499, first Lutheran Archbishop of Sweden in 1531. Introduced the Lutheran order of service in 1571, died in 1573.

³ Gustav Adolf (1594–1632), king of Sweden, son of Gustav Vasa. He was the great defender of Lutheranism during the Thirty Years War. Killed in battle in Germany at Luetzen on November 6, 1632. His body lay in state at St. Mary's in Wittenberg on its journey back to Sweden. Gustav Vasa (1496–1560) became king of Sweden in 1523. He appointed Olavus Petri preacher in Stockholm and commissioned Laurentius Petri to translate the New Testament. He also sent the first missionaries to the Laplanders.

and their consciences are bound in favor of their form of government by false doctrine. In our Evangelical Lutheran Church, however, we must preach to our congregations that the choice of the form of government for a church is an inalienable part of their Christian liberty and that Christians as members of the Church are subject to no power in the world except the clear Word of the living God. There the above-mentioned disastrous results are certainly to be feared from any restriction of the liberty of the congregations, especially in a republic such as ours is.

We can, however, certainly hope for altogether different results if we ask nothing unconditionally of our congregations except submission to the Word, if we therefore leave it to them to govern themselves and assist them only with our advice. We need not fear that the secular element of a political democracy will invade the Church, that therefrom will arise a popular government, a papacy of the people, and that we, who are to be servants of Christ, will thereby become servants of men. How can this be an ungodly popular government, where the people use the rights given to them by God? How can this be a papacy of the people, if the priestly nation of Christians does not permit any man to enact laws for them in matters that God has not prescribed and is willing to obey the preacher of the Word unconditionally only when Christ Himself speaks through him, that is, when he preaches His Word? No, a disgraceful popular government occurs only where the people presume to prescribe to the preacher what he may and may not preach of God's Word; where the people make bold to contradict the Word of God and to interfere in any respect with the conduct of the office according to the Word; or where the people claim for themselves alone the power to enact ordinances in the Church, exclude the pastor from this power, and demand that he submit to these ordinances. Accordingly, only such a preacher is a servant of men as does not serve Christ faithfully because of fear of men or because of desire to please men, departs from God's Word in doctrine or practice, and preaches for the itching ears of his audience. But where the pastor is given *only* the power of the Word, but its full power, where the congregation, as often as it hears Christ's Word from the mouth of the preacher, receives it as the Word of God, there the proper relationship between pastor and congregation exists. He stands in their midst not as a hired mercenary but as an ambassador of the Most High God; not as a servant of men, but as a servant of Christ, who in Christ's stead teaches, admonishes, and reproves. There the apostolic admonition is properly observed: "Obey your leaders and submit to them, for they are keeping watch over your souls, as those who will have to give an account. Let them do this with joy and not with groaning, for that would be of no advantage to you" [Hebrews 13:17]. The more a congregation sees that he who has the rule over them in the Lord desires nothing but that the congregation be subject to Christ and His Word; the more it sees that he does not desire to dominate them—yes, indeed, that he himself with a jealous eye guards the liberty of the congregation—the more willing the congregation will become to hear his salutary recommendations also in matters that God has not prescribed. It will follow him

in these matters not as a taskmaster because it must, but as their father in Christ, because they wish to do it for their own advantage.

Also our synodical body has the same prospects of salutary influence if it does not attempt to operate through any other means than through the power of the Word of God. Even then we must expect battles, but they will not be the mean, depressing battles for obedience to human laws, but the holy battles for God's Word, for God's honor and kingdom. And the more our congregations will realize that we do not desire to employ any other power over them than the divine power of the Word, the power of God unto salvation to every one that believeth, the more will also our counsel find an open door among them. To be sure, those who do not love the Word will separate from us. But for those who love it, our fellowship will be a comforting refuge; and if they adopt our resolutions, they will not consider them a foreign burden imposed upon them from without, but as a benefit and a gift of brotherly love, and will champion, defend, and preserve them as their own.

Even though we possess no power but that of the Word, we nevertheless can and should carry on our work joyfully. Let us, therefore, esteemed sirs and brethren, *use* this power properly. Let us above all and in all matters be concerned about this, that the pure doctrine of our dear Evangelical Lutheran Church may become known more and more completely among us, that it may be in vogue in all of our congregations, and that it may be preserved from all adulteration and held fast as the most precious treasure. Let us not surrender one iota of the demands of the Word. Let us bring about its complete rule in our congregations and set aside nothing of it, even though for this reason things may happen to us, as God wills. Here let us be inflexible, here let us be adamant. If we do this, we need not worry about the success of our labor. Even though it should *seem* to us to be in vain, it *cannot* then be in vain, for the Word does not return void but prospers in the thing whereto to the Lord sent it [Isaiah 55:11]. By the Word alone, without any other power, the Church was founded. By the Word alone, all the great deeds recorded in Church history were accomplished. By the Word alone, the Church will most assuredly stand also in these last days of sore distress, to the end of days. Even the gates of hell will not prevail against it. "All flesh is as grass and all its glory like the flower of grass. The grass withers, and the flower falls, *but the Word of the Lord* remains forever" [1 Peter 1:24–25]. Amen.

Exhibit B

The Church & The Office of The Ministry



KIRCHE UND AMT

The Voice of Our Church on the Question
of Church and Office

A Collection of Testimonies regarding This Question from the
Confessions of the Evangelical Lutheran Church and from the
Private Writings of Orthodox Teachers of the Same.

From the German Evangelical Lutheran Synod of Missouri, Ohio,
and Other States as a Witness of Its Faith, Set Forth as a Defense
against the Accusations of Herr Pastor Grabau in Buffalo, New York

C. F. W. WALTHER

Professor of Theology at Concordia College, St. Louis, and
Pastor of the Evangelical Lutheran Congregation There.

Translated from the third edition (1875) by J. T. MUELLER
Revised, edited, and annotated by MATTHEW C. HARRISON



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THESIS VII

*As visible fellowships [Gemeinschaften] that still have the Word and the Sacraments essentially according to God's Word bear the name "church" because of the true invisible Church of genuine believers that is found in them, so also they possess the **authority** that Christ has given to His whole Church on account of the true invisible Church hidden in them, even if there were only two or three [believers].*

EDITOR'S NOTE: The word of the Gospel is proclaimed. Faith is created. The Church comes into being. As we will note in the second half of this book, Luther's teaching on the Office of the Ministry has certain inherent tensions that cannot be resolved, nor should they be: The office is divinely instituted and mandated, and the pastor stands in the place of Christ; thus the office is "from above." The office is conferred by God through the Church, spiritual priests who by virtue of faith in Christ have authority to speak the Gospel, bind and release sins, etc.; thus the office is "from below." Wilhelm Löhe promoted Luther's "from above" teaching of the office. Johann Wilhelm Friedrich Höfling, for example, promoted the "from below" teaching. Walther held both in all their challenging tension.

In this thesis, we see the "from below" teaching on the authority of the Church, present wherever two or three are gathered in Christ's name. The ramifications of this perspective for the doctrine of the Office of the Ministry will be discussed at length in the second section of this book. Here it is significant that Walther does not exclude clergy from the inherent authority that belongs to the Church. Clergy possess the Keys both as baptized spiritual priests and as those called to exercise the Keys—which are given to all—publicly in the name of Christ on behalf of the Church. This quotation from Johann Wigand is illustrative: "Every church in every place—that is, the whole multitude, both laymen, as we call them now, together with their pastor—has the power to elect, call, and ordain able ministers of the church and to remove [from office] and to flee from false teachers or such as by their wicked life hinder the upbuilding of the church. This is clear from

the passages pertaining to the power of the Keys, for the Keys have been given to the whole Church."¹

Also significant in this thesis is what I have elsewhere called Lutheranism's "joyful and generous orthodoxy."² The Church exists where enough of the Gospel and Sacraments are present to create believers. We know that, despite division and error, the Word of God creates believers far and wide—well beyond orthodox Lutheranism! Thanks be to God! And wherever two or three are gathered in faith, there is the right of the Church to call and ordain pastors. Although Walther's tenacious insistence upon the pure Word and Sacraments would seem to militate against the idea that the Church is to be found outside of orthodox Lutheranism, the opposite is true. The Word and Sacraments are our only hope in this life for life eternal. And these means of grace are so powerful that even though partially obscured by erring churches and clergy, they still do what they promise: create faith in Christ and His cross. The more tenacious we are in retaining the Word and Sacraments according to the biblical and Lutheran understanding and practice, the more convinced we are that they create faith far and wide outside our own communion. This is a blessed fact! So we happily confess with Walther and Luther that the Church and the Office of the Ministry exist wherever Jesus is believed, a fact we must always keep in mind, especially when we must critique the doctrine and practice of other Christian churches, particularly Roman Catholicism. MH

1. PROOF FROM GOD'S WORD

Thus says the Lord in Matthew 18:17: "Tell it to the church [*Gemeine*]. And if he refuses to listen even to the church, let him be to you as a Gentile and a tax collector." It requires no proof that the Lord here speaks of a **visible, particular church** [*Partikularkirche*]. But when the Lord immediately after these words continues: "Truly, I say to you, whatever you bind on earth shall be bound in heaven, and whatever you loose on earth shall be loosed in heaven" (v. 18), He obviously speaks about the Keys of the kingdom of heaven or the church power [*Kirchengewalt*], which in Matthew 16:19 He had given through Peter to His whole holy Church, also to every visible particular

¹ In Matthias Flacius, et al., *Centuriae magdeburgenses seu historia ecclesiastica novi testamenti* (Lucius: Basel, 1624), 1.2.4. MH

² Matthew C. Harrison, *A Little Book on Joy: The Secret of Living a Good News Life in a Bad News World* (St. Louis: Concordia, 2011). MH

church.³ But in order that no one might think that this great power was given only to large and populous congregations, He adds in [Matthew 18:]19–20: “Again I say to you, if two of you agree on earth about anything they ask, it will be done for them by My Father in heaven. For where two or three are gathered in My name, there am I among them.” Hence if there were in any particular congregation [*Partikulargemeinde*] even only two or three true believers, true children of God, true members of the spiritual Body of Jesus Christ, then because of them that congregation would be a congregation of God and the rightful possessor of all rights and authorities that Christ has procured for and given to His Church.

2. WITNESSES OF THE CHURCH IN ITS PUBLIC CONFESSIONS

Ap VII–VIII (IV) 9 Thus it says in the **Apology [of the Augsburg Confession]** (Müller, p. 153): “That also we may not doubt that a Christian Church, which is Christ’s Bride, is alive and exists on earth, **though the godless multitude is more and larger**, and that our Lord Christ daily works here on earth **in the multitude that is called the church**, forgiving sins, daily hearing prayers, daily comforting His own in their spiritual afflictions [*Anfechtungen*] by His rich and strong consolation and always restoring them, there is placed in the consoling article of the Creed: ‘I believe [in] a catholic, universal Christian Church.’”⁴ According to these words the Apology confesses that we can be sure that God works “in the multitude, which is **called the church**,” though it contains many who are not saints [*Nichttheilige*], because we may and should believe that in the midst of this visible assembly there is hidden a holy Christian Church and that this Church in its midst possesses Christ and His gifts.

Ap VII–VIII (IV) 28; Lk 10:16 Again the **Apology** (Müller, p. 158) declares: “And we also confess that as long as this life on earth endures, many hypocrites and wicked [persons] will be in the church among the true Christians, and that these also are members of the church so far as the outward marks are concerned. For they hold offices in the church, preach, administer the Sacraments, and bear the title and name of Christians. And the Sacrament [Lord’s Supper], Baptism, etc., are not without efficacy or power because they are administered by unworthy or wicked [persons]. **For these are not there because of their own person**

³ JTM added in brackets “individual congregation.” It is somewhat unexpected that Walther chooses the term *Partikularkirche* and not *Gemeinde* here, the former term being used by the quoted dogmaticians almost universally of a transcongregational fellowship of local congregations. MH

⁴ Cf. *Triglot Concordia* (German), 228; BSLK, 235.10. MH

but because of the call of the Church and because of Christ,⁵ as He attests: “The one who hears you hears Me” [Luke 10:16].⁶ Thus whatever **those** who are unbelievers and therefore are not members of the [true] Church and have no right to administer the authority of the Keys [*Schlüsselgewalt*] do in the church (whether they preach, administer the Sacraments, elect and ordain ministers of the church, etc.), they do as instruments [*Werkzeuge*] or delegates, etc., of the Church, that is, of the true believers.

Appendix to the Smalcald Articles (Müller, p. 333): “And Christ says when speaking the words ‘Whatever you bind,’ etc. [Matthew 18:18], in order to indicate **to whom** He gave the Keys, namely, to the **churches**: ‘Where **two or three** are gathered in My name,’” etc. [Matthew 18:20].⁷

[Appendix to the Smalcald Articles] (Müller, p. 341): “Wherever” ([Latin:] *ubicunque*, where only ever) “the Church is, there also is the **mandate [Befehl]** to **preach** the Gospel; hence the churches must retain the **authority** to call, elect, and ordain ministers of the church, and this authority is a gift that the Church has properly been given from God and that cannot be wrested from it by any human tyranny, as St. Paul attests in Ephesians 4[:8] when he says, ‘When He ascended on high . . . and He gave gifts to men.’ Here also belong the declarations of Christ that testify that the Keys were given to the whole Church and not [merely] to particular persons, as the text says: ‘Where two or three [are gathered],’ etc. [Matthew 18:20]. Finally, this [truth] is also confirmed by the passage of Peter, as he says, ‘You⁸ are . . . a royal priesthood’ [1 Peter 2:9]. These words pertain properly to the true Church, which, **because** it alone has the **priesthood**, must also have the **power [Macht]** to elect and ordain ministers of the church.”⁹

3. WITNESSES OF THE CHURCH IN THE PRIVATE WRITINGS OF ITS TEACHERS

[Martin] Luther: “In Matthew 18:19–20 we read that even two or three, gathered in Christ’s name, have the same power as St. Peter and all [other] apostles. For the Lord Himself is there present, just as He says, John 14:23: ‘If anyone loves Me, he will keep My Word, and My Father will love him, and We will come to him and make Our home with him.’ Therefore, it has

⁵ The Latin text reads: “And it does not deprive the Sacraments of their efficacy that they are administered by unworthy [persons] because they do not represent their own persons by virtue of the call of the Church, but that of Christ.” CFWW

⁶ Cf. *Triglot Concordia* (German), 236; BSLK, 240.51. MH

⁷ Cf. *Triglot Concordia* (German), 510; BSLK, 478. MH

⁸ Plural. MH

⁹ Cf. *Triglot Concordia* (German), 522; BSLK, 491. MH

happened that often one man who believed in Christ withstood a whole group, as did Paphnutius¹⁰ at the Nicene Council or as the prophets opposed the kings of Israel, priests, and all the people. In short, God does not want to be bound to a multitude, greatness, height, power, and whatever else is personable among people, but He wants to be only with those who love and keep His Word, **even if they are mere stableboys** [*Stallbuben*]. What does He care for the high, great, and mighty lords? He alone is the greatest, highest, and mightiest. . . .

"Here we have the Lord Himself, [ruling] over all angels and [other] creatures, who says that they should all have the same authority, Keys, and office, even two humble Christians gathered alone in His name. The pope and all devils shall not make this Lord a fool, liar, or drunkard before us; instead, we shall tread the pope under our feet and declare that he is a horrible liar, blasphemous, and idolatrous demon, who under the name of St. Peter has appropriated the Keys to himself alone, though Christ gave them to all alike and in common" ([*Against the Roman Papacy*], 1545; Halle 17:1346–47).

W² 19:1283
(Cf. AE 38:211–12);
Mt 18:19–20

[Luther]: "That is and must remain our foundation and firm rock: Wherever the Gospel is preached, there must be a holy Christian Church, and whoever doubts this might just as well doubt that the Gospel is the Word of God. But wherever there is a holy Christian Church, there must be all Sacraments, Christ Himself, and His Holy Spirit. If, then, we are to be a holy Christian Church and are to possess the greatest and most necessary parts—as God's Word, Christ, the Spirit, faith, prayer, Baptism, the Sacrament [Lord's Supper], the Office of the Keys, and so forth—and are not also to possess the least part, namely, the power and right to call some to the Office [of the Ministry] who are to administer to us the Word, Baptism, the Sacrament, forgiveness (all of which are already present) and serve us therein, what kind of church would that be? What would become of the Word of Christ, which He says in Matthew 18:20: 'Where two or three are gathered in My name, there am I among them'? Or in v. 19: 'If two of you agree on earth about anything they ask, it will be done for them by My Father in heaven'? If two or three have such power, how much more a whole church?" ([*The Private Mass*], 1533; Halle 19:1565–66).

W² 17:2192–93
(Cf. AE 40:231–34)

[Luther]: "We confess that under the papacy there are many Christian gifts [*Gutes*]; indeed, every Christian gift is there, and also has come to us from there. Namely, we confess that the papacy has the true holy Bible, the true Baptism, the true Sacrament of the Altar, the **true Keys** for the forgiveness of sins, the true preaching office, **the true catechism**, as the Ten Commandments, the Creed, and the Lord's Prayer; just as the pope also confesses (though he condemns us as heretics) that we and all [other] heretics

¹⁰ Bishop of Thebes and a confessor who lived during the fourth century. MH

have the Holy Scriptures, Baptism, the Office of the Keys, the catechism, etc. 'O [Luther,] what a hypocrite you are now!' But why am I a hypocrite? I speak of what the pope has in common with us. In the same way he also acts the hypocrite with us and all [other] heretics in a gross way by saying what we have in common with him. I could act the hypocrite still more, and yet it would not help me.¹¹

"I say that the papacy has the true Christendom—indeed, the true pick of Christendom and many great and pious saints. Should I stop acting the hypocrite? Listen to what St. Paul says in 2 Thessalonians 2:4: 'The Antichrist sits as God in the temple of God.' If, then, the pope (as I truly believe) is the very Antichrist, he will not sit or rule in the stable of the devil but in the temple of God. No, indeed, he will not sit where there are only devils and infidels or where there is no Christ or Christendom, for since he is the Antichrist [*Widerchrist*], he must sit in the midst of Christians. And if he should sit and rule there, he must have Christians under himself. For God's temple is not a stone pile, but the holy Christendom (1 Corinthians 3:17) in which he shall rule. Therefore, if Christendom is under the papacy, then truly [Christendom] must be Christ's Body and member. If it is His Body, then it has the right Spirit, Gospel, faith, Baptism, the Sacrament [the Lord's Supper], Keys, preaching office, prayer, Holy Scripture, and all things that Christendom should have. We, too, are still under the papacy and have these Christian gifts from it. But [the pope] persecutes us, curses us, excommunicates us, outlaws and burns us, kills us, and deals with us poor Christians as the real Antichrist is to treat Christians. 2Th 2:4 Luther

"But such Christians must be rightly baptized and be sincere members of Christ; otherwise, they could not obtain the victory over the Antichrist by martyrdom. Therefore, we do not rave, as do the factious spirits, that we reject what the pope possesses. For then we would reject also the Christian Church, the 'temple of God,' together with all blessings that it has obtained from Christ. But against this we contend that the pope does not want to continue with just the gifts of Christendom that he has inherited from the apostles, but he adds to them his own devilish additions and much more, and does not use the gifts for the upbuilding of the temple of God but for its destruction, so that one might regard his command [*Gebot*] and order [*Ordnung*] higher than the order of Christ. Nevertheless, despite this destruction Christ preserves His Christendom, just as He preserved Lot in Sodom, about which St. Peter also preached in 2 Peter 2:6–7, that both remain: the Antichrist sits in the temple of God through the working of the devil (2 Thessalonians 2:4, 9), yet nevertheless the temple of God is and remains God's temple through Christ's [gracious] preservation. If the pope can tolerate and accept

¹¹ I would still not please the pope by doing so. CFWW

this, my 'hypocrisy,' then certainly I will be his obedient son and a pious Papist. That I would truly gladly be, and I would take back everything by which I have hurt his feelings. Therefore, the Anabaptists and fanatics err when they say that whatever the pope has is wrong, or that because this and that happens under the papacy, we must do it differently. It is just as though they want to prove themselves eager enemies of the Antichrist, but they do not see that they thereby greatly strengthen him¹² while they greatly weaken Christendom and deceive themselves. They ought to help us reject the abuse and additions [of the pope], but by that they would not obtain any special glory, since they see that they cannot be the first in this matter. Therefore, they attack what no one else has attacked in order that they might be the first in doing it and claim the honor for it.

"But this honor must be turned into shame, **for they attack the temple of God and miss the Antichrist who sits in it**; they are like the blind people who search for water but put their hand into the fire.¹³ Indeed, they do as one brother did to another in the Thuringian Forest: they walked together through the woods when suddenly a bear attacked them and threw one of them under his body. The other wanted to help his brother, stabbed at the bear, but missed him and wretchedly pierced the brother who was under the bear.

"The fanatics do the same. They should help the poor Christendom, which the Antichrist has in his power and tortures, and bitterly oppose the pope; but in this they fail and murder all the more miserably the poor **Christendom under the pope**. For if they would leave intact Baptism and the Sacrament [the Lord's Supper], the souls of the Christians under the pope might yet escape and be saved, as has happened up to now. But since now the Sacraments are taken from them, they undoubtedly will be lost, since also Christ Himself is thereby taken away. My dear friend, that is not the way to smack the pope, because Christ's saints are under him. It requires a careful, modest spirit to let stand God's temple and to oppose the additions by which [the pope] destroys God's temple" ([*Concerning Rebaptism*], 1528; Halle 17:2646–50).

W² 17:1334–38
(Cf. AE 41:207–10)

[Luther]: "Here, no doubt, they might ask us: 'Why do you describe us as so very atrocious, [that is,] as a new and apostate church despite the fact that we retain Baptism, the Sacrament, the Keys, the Creed, and the Gospel just

¹² Inasmuch as the pope knows that they are wrong, and also inasmuch as they deprive the Christians under the pope of what still makes them Christians despite the opposition of the pope. CFWW

¹³ What Luther says here of the gifts, rights, and powers, etc., that the papacy still has is true, of course, of all other sects that do not altogether deny God's Word, as do, for example, the so-called "free congregations" [rationalistic communions], in which there are no longer any Christians and therefore also can be no Christian rights. CFWW

as did the ancient church from which we stem, especially since before this you admitted that we, as well as you, stem from the ancient church?' To this I reply: It is true, I confess, that the church in which you are stems from the ancient church, just as do we, and that [your church] has the same Baptism, as well as the Sacrament, the Keys, and the text of the Bible and the Gospel. Indeed, I will accord you still higher praise and confess **that we from the church among you (not from you) have received everything**. What more do you want? Are we not pious enough? Will you not henceforth admit that we are not heretics?

"We do not regard you as Turks or Jews (as stated before), **who are outside the church**. But we do say that you do not remain with [the church], but you become a straying, apostate, whorish church (as the prophets used to say), which does not stay with the church from which it was born and by which it was brought up. You run away from the [ancient] church and from the right Husband or Bridegroom (as Hosea 1:3 says of the people of Israel) to the devil Baal, Molech, Ashtaroth. Do you not understand this?

"Let me explain it to you: You were all surely baptized with the right Baptism of the ancient church, just as we were, especially in infancy; and whoever lives in that Baptism until the seventh or eighth year and then dies before he understands the whorish church of the pope, he certainly is blessed [*selig*] and will be saved. That we do not doubt. But when he grows up and hears, believes, and follows your false teachings [*Lügenpredigt*] concerning your satanic innovations, he becomes the devil's harlot together with you and falls away from his Baptism and Bridegroom, as [I have seen] happen to others, builds on and trusts in his own works. . . . Of such harlots Hosea speaks, and much more coarsely—indeed, even almost too coarsely—the prophet Ezekiel [speaks of them in] ch. 23:3ff. You may want to read that so that you may know what kind of harlot your church is. . . .

"St. Peter also speaks of this [harlotry] when he says of your new prophets and churches, 2 Peter 2:18–22: 'The dog returns to its own vomit, and the sow, after washing herself, returns to wallow in the mire.' Such you are, just as I once was. Here your new, apostate, straying church is graphically described and clearly depicted before your eyes. We confess not only that you" (Papists) "came with us out of the true Church and that with us you were bathed and washed in holy Baptism through the blood of our Lord and Savior Jesus Christ, as St. Peter here says [2 Peter 2:20–21], but we say also that you are and remain in the church—indeed, that you sit and rule in it as St. Paul in 2 Thessalonians 2:4 predicts that the accursed Antichrist will sit in the temple of God (not in a cowshed). But you are no longer of the Church, nor are you **members** of it, but in **such holy churches of God you establish your new apostate churches** of the devil's whorehouse, and

2Pt 2:22

with it unspeakable harlotry and idolatry or innovations through which you mislead, together with yourselves, the baptized and redeemed souls and cause them to be swallowed up by the abyss of hell through its infernal laws, together with uncounted others, to the unspeakable sorrow and heartache of all those who see and recognize this with their spiritual eyes.

"But it is God, who by His wonderful almighty power, despite the great abomination and the harlotry of the devil, preserves **among you** through Baptism some infants and a few older persons—only, alas, too few—who, when dying, hold to Christ, of whom I have known many. Therefore, **the true ancient Church with its Baptism and God's Word remains among you**, and your god, the devil, cannot altogether destroy [the true Church], despite so much new idolatry and all your satanic harlotry. It is just as it was in the days of Elijah, 1 Kings 19:18, when everyone was dedicated only to Baal, idolatry, and harlotry in the land (though all were **called** God's people, that is, the holy church, and gloried in the God who had led them out of Egypt). Then not one altar to God was preserved, and yet God kept for Himself seven thousand of all the many thousands, among whom were the greatest and best that went to the devil" (writing *Against Hanswurst*, 1541; Halle 17:1673ff.).

W² 10:1599–1600
(Cf. AE 40:41–42);
1Co 14:24–25 Luther

[Luther]: "But if such doubts should assail and trouble you that you think you were not a church or God's people [*Volk Gottes*], let me tell you: You cannot recognize the Church by its outward conduct. You can recognize it only by God's Word, 1 Corinthians 14:24–25, which says: 'If all prophesy, and an unbeliever or an uninformed person comes into the congregation,¹⁴ he is convinced by all, he is judged of all. And thus the secrets of his heart are revealed; and so, falling down on his face, he will worship God and report that God is truly among you.' But it is surely true of you that **in many of you** there is **God's Word** and the **knowledge of Christ**. But be it wherever it may, wherever the Word of God is, together with the knowledge of Christ, it is never without fruit, no matter how weak it may appear by the outward conduct of those who heed it. For the church, though it is weak because of sin [of its members], is never unchristian but always Christian by the Word. It [its members] indeed sins, but it confesses and knows the Word and does not deny it. Therefore, we must not cast out those who praise and confess the Word even though they do not shine or glitter by any outstanding holiness, as long as they do not live in manifest sins or lead a perverse life.

"Therefore, you should not doubt whether the Church is with you, even though there were only ten or six who thus keep the Word. For whatever they do in this matter [calling and ordaining pastors], even with the approbation of the others who do not keep the Word, one can be assured

14 *Gemeinde*; WA 12:194.35: *Ecclesiam*. MH

that Christ does it, when they administer the matter in humility and with prayer, as said before" ([*Concerning the Ministry*], 1523; Halle 10:1870–71).

[Luther]: "He" (Eck) "says that it is manifestly false and contrary to the custom of the whole church¹⁵ that every priest [*Priester*] can absolve a penitent person from the punishment and guilt [of sin]. Otherwise, every village pastor¹⁶ would be a bishop, archbishop, and pope. To this let me make a twofold reply: To this day I really do not see how this restraint of jurisdiction could accomplish the purpose for which it is pretended. . . . Since according to Acts 20 a bishop is the same as a presbyter, and since according to Titus 1 every city should have its own bishop according to divine right, **the best form for dealing with sin** would be if every parish pastor [*Pfarrer*] in his parish [*Pfarr*]¹⁷ would bind or loose the penitent [*den Büssenden*]. St. Paul shows this by his own example in 1 Corinthians 5. . . . Just why this right and blessing for the churches, prescribed by divine right and long used, became unusable and ceased, I will leave for others to investigate. . . .¹⁸

W² 15:1095–96
(Cf. WA 2:378–379)

"In the second place, let me say that the church would certainly remain standing if a village pastor [*Dorfpfarrer*] would be at the same time bishop, archbishop, and pope" (that is, if he would have no preacher [*Prediger*] over him), "and if [the church] would cohere, as Cyprian says, only by concord, as was the custom of the first churches" (*Leipzig Disputation*, 1519; Halle 15:1297–99).

Johann Wigand: "Every church¹⁹ in every place—that is, the whole multitude, both laymen, as we call them now, together with their pastor—has the power to elect, call, and ordain able ministers of the church and to remove [from office] and to flee from false teachers or such as by their wicked life hinder the upbuilding of the church. This is clear from the passages pertaining to the power of the Keys, for the Keys have been given to the whole Church"²⁰ (*Centuriae Magdeburgenses* 1.2.4, p. 803; Basil edition, 1:392). From the way Wigand here reasons, it is obvious that when he ascribes the Office of the Keys to the **whole** Church, he means to every part of the church.²¹

15 *ganzen Kirche*; Luther: *totius ecclesiae*. MH

16 *Dorfpfarrer*; Luther: *villanus sacerdos*. MH

17 Luther: *quilibet sacerdos in sua parrochia*, that is, "every priest in his parish" (WA 2:379.15). MH

18 JTM omits this sentence. MH

19 JTM translated this as "congregation." MH

20 *ganzen Kirche*; Wigand: *totam ecclesiae coetum*. MH

21 JTM adds in brackets: [to every local congregation]. However, Walther here emphasizes Wigand's point that the Keys belong to all spiritual priests (including the clergy) by virtue of Baptism, and to clergy by virtue of office. MH

Mt 16:19; 18:15

[Matthias] Flacius: "It is obvious that the Keys have been given not only to Peter nor only to the apostles but to the whole Church of God. This is manifest partly from the very words of the Lord Himself and partly also from the writings of the fathers and ancient interpreters of the words 'I will give you the keys of the kingdom of heaven,' Matthew 16[:19], who understood and interpreted these words as pertaining to the whole Church and not merely to Peter. . . . Therefore, because these miserable people [the Papists] do not recognize in *Petro* the *petra* (the rock) and do not want to believe that the Keys of the kingdom of heaven were given to the Church, they themselves have lost [the Keys] out of their hands. Indeed, the Lord Himself soon afterward—namely, in Matthew 18:15–20—applies His saying concerning the Keys to the whole Church and all believers [*Fromme*], and not only to the pope and the clergy, when He says: 'If your brother sins against you,' etc. **But the Keys embody and embrace all rightful power and authority of church government,**²² either to do or to omit something. This cannot be denied, nor is it commonly denied" (*Demonstr., quod electio praesulum et episc. non ad ecclesiasticos solum, sed et ad laicos pertineat*, pp. 55–56).

[Martin] Chemnitz: "The tenth Canon" (of the Council of Trent says): "If anyone says that all Christians have the power²³ to administer the Word and all the Sacraments, let him be anathema." Examination: The words that [the Papists] condemn in this canon they have culled from Luther's booklet on the Babylonian captivity.²⁴ But they have both mutilated Luther's words and corrupted the meaning, in order that they may make Luther's doctrine hateful to the inexperienced, as if [Luther's doctrine] were a disturber of all divine and human order in the church. But Luther never meant that any Christian either could or should indiscriminately, without a legitimate call [*rechtmäßigen Beruf*], arrogate to himself or usurp the office of the Word [*Amt des Wortes*] and the administration of the Sacraments in the church. . . . Against the tyrannical opinions" (of the Papists) "Luther taught from the Word of God that Christ gave and committed the Keys, that is, the office of the Word and of the Sacraments, to the whole Church . . . **so that the highest power of the Word and of the Sacraments is with God;** then, that the **office belongs to the Church**, through which God mediately calls, chooses, and sends ministers. Third, then, [the Office of the Ministry] is with those who are **legitimately chosen and called** by God through the Church; **therefore, [the Office of the Ministry is] with the ministers** to whom the use or administration of the office of the Word and the Sacraments has been mandated.

22 *Kirchenregimentes*; Flacius: *ecclesiastici regiminis*. MH

23 *Macht*; Chemnitz: *potestatem*. MH

24 *Babylonian Captivity of the Church* (1520), AE 36:3–126 (cf. W² 19:4–129). MH

"With this distinction, which is true and clear, Luther meant to restrain the arrogance of the priests [*Messpfaffen*] who were puffed up by the opinion that they alone possessed all power with respect to the Word and Sacraments, so that the Sacraments were valid on account of the imprinting on them—of I don't know what kind—of the indelible character of a status [*Standes*].²⁵ And lest the rest of the church itself should dare to say by so much as a silent sigh, 'What are you doing?' they arrogantly pretended that the rest of the church had no power whatever in [matters of] the Word and the Sacraments. That Luther touched this sore spot and applied the knife from the Word of God, that is truly what gives the Papists a burning pain and agitates bad feelings even today, after so many years" (*Examen conc. Trid.*, 222b–223a).²⁶

[Johann] Gerhard: "Wherever there is gathered and preserved for God a church, there ordination, which is imparted [*ertheilt*] with the laying on of hands of the presbytery and by the public prayers of the church, is to be regarded as valid, though the presbytery of that church may not be sound in all points [of doctrine] and free from all errors. (1) Because ordination is administered not in the private name of the presbytery, but publicly **in the name of the whole Church**. However, God **gathers and preserves a church** [even] where the ministerium" (that is, the bearers of the preaching office) "is not absolutely sound [in doctrine], provided that Baptism, the holy Ten Commandments, the Apostles' Creed, the sacred Passion narrative, and other essential and fundamental articles of the Christian faith are retained. **Therefore**, also in such places in which the ministerium is not altogether pure and free from error, ordination can be imparted in the name of the Church, and it is to be regarded as valid if it has been given" (*Loci theologici, De min. eccl.*, § 156). What Gerhard says here of the power of a heretical particular church on account of the congregation of saints hidden in it applies,

Cf. GerhTC
26/1:229

25 "Episcopal consecration confers, together with the office of sanctifying, also the offices of teaching and ruling. . . . In fact . . . by the imposition of hands and through the words of the consecration, the grace of the Holy Spirit is given, and a sacred character is impressed in such wise that bishops, in an eminent and visible manner, take the place of Christ himself, teacher, shepherd, and priest" (*Catechism of the Catholic Church*, § 1558, p. 434). "Through that sacrament priests by the anointing of the Holy Spirit are signed with a special character and so are configured to Christ the priest in such a way that they are able to act in the person of Christ the head" (*Catechism of the Catholic Church*, § 1563, p. 435). "It is true that someone validly ordained can, for grave reasons, be discharged from the obligations and functions linked to ordination . . . but he cannot become a layman again in the strict sense, because the character imprinted by ordination is for ever" (*Catechism of the Catholic Church*, § 1583, p. 441). "The sacrament of Holy Orders, like the other two, confers an *indelible spiritual character* and cannot be repeated or conferred temporarily" (*Catechism of the Catholic Church*, § 1582, p. 441, *emphasis original*). MH

26 Cf. Chemnitz's Works 2:96–97. MH

of course, at the same to all other aspects of the power of the Keys or the church authority.²⁷

Cf. GerhTC
26/1:115;
1Co 3:21-22

[Gerhard]: "Christ has given to His Church, as to His Bride, the Keys of the kingdom of heaven (Matthew 16:18; 18:17). To His Church He has promised that when they will agree among themselves about what they will ask—whatever it may be—it should be done for them by His Father, who is in heaven, Matthew 18:19. To His Church He has entrusted the Word and the Sacraments, as the apostle says in Romans 3:2 that to the Israelite church were committed the oracles of God and in Romans 9:4 that to it belong the adoption, the glory, the covenant, the giving of the Law, the divine service, and the Sacraments. The Church is the house of God, 1 Timothy 3:15, in which the ministers are appointed [*bestellt*] stewards, 1 Corinthians 4:1. Therefore **to [the Church] belongs the office**, 1 Corinthians 3:21[-22]: 'All things are yours, whether Paul or Apollos or Cephas.' Therefore to the Church belongs the delegated"²⁸ (conferred²⁹) "right, as it is called, to appoint able ministers of the Word. And God wills to make use of the ministry [*Dienstes*] of the Church in the mediate calling of pious teachers" (*Loci theologici, De min.*, § 85).

Cf. GerhTC 25:147;
Mt 18:20

[Gerhard]: "Christ says in Matthew 18:20: 'Where **two or three** are gathered in My name, there am I among them.' So where Christ is, there, according to His promise, is the **Church**. The holy apostle [Paul] in Romans 16:5; 1 Corinthians 16:19; Colossians 4:15; Philemon 2 calls the Christian family of one house a 'church.' However, since two persons—namely, man and wife—constitute a family, they also may constitute a church" (*Loci theologici, De ecclesia*, § 87).

[Abraham] Calov: "We must distinguish between what remains of the **catholic** in the Roman religion and what is **papist** or stems from the pope. For [the Roman religion] retains some chief parts of the true, Christian, catholic doctrine, namely, the Holy Trinity, the incarnation of the Son of God, the atonement [*satisfactione*] of Christ, and other [teachings]. It retains also the Sacrament of initiation, by which children are implanted into the Church, and it permits the Word of God, which is a means of salvation, to be read on Sundays and festival days.

"Hence we readily admit that the Roman Catholic religion of the Roman Empire, in the things just named and in [other] similar matters, has the right [of a church]. Nor do we object to the fact that to the church of the Romanists on that account [because of its right] there is given the name 'Catholic,' namely, inasmuch as, together with other true believers who are

²⁷ JTM omitted this concluding sentence. MH

²⁸ *delegierte*; Gerhard: *delegatum*. MH

²⁹ *übertragene*; Gerhard: *delegatum*. MH

everywhere, it teaches some chief parts of the faith and in part administers the Sacraments. But we do not admit that it is catholic in the sense that it has the uncorrupted faith that agrees with Holy Scripture in all things. It is papistic inasmuch as it cherishes papistic doctrines and sacraments that crept into it without and against Holy Scripture. These certainly do not entitle it to any right, neither in the Roman Empire nor anywhere else in the world, though [this is claimed] through the deception and arrogated tyranny of the pope" (*Tract. de natura pacis relig. Aug.*, quaest. 30).

[Balthasar] Mentzer: "Passing over other matters, let the Papists themselves say who in a large ecclesiastical assembly [*kirchlichen Versammlung*] are the true believers and elect. If they cannot do this, and surely they cannot since they cannot look into the hearts, let them confess that the Church of the saints and elect is invisible. For since many are called but few are chosen [Matthew 22:14], we certainly can know the called, but we cannot know those who among them are the elect. **And yet we must confess that all the glorious things that are said of the church are said of it because of the elect.** Of this synecdoche St. Augustine speaks in the 59th letter to Paulinus. . . .³⁰

"This happens in this case just as when someone would give to an acre laudable names because of the wheat, though with it there are mixed many tares; or to a city on account of its excellent citizens, though among them there are many wicked and perverse [persons]; or to a university, on account of its excellent and learned students, though there are many ignorant and indolent fools among them" (*Exegesis Confessionis Augustanae*, pp. 291-96).

[Friedrich] Balduin: "It is our opinion that ordination belongs to the whole **Church**, for it calls and ordains the ministers; but it executes this, **its** right, through the ministerium. . . . Has every ministerium in every place the power to ordain its ministers of the church? If we would speak of the right of the church in a narrow sense, we would not deny this, since every **particular church**³¹ has the right to ordain. . . . Wherever there is a church that has retained Baptism uncorrupt in its essential parts, a portion of God's Word, such as the Gospels and Epistles for the various Sundays, the Passion narrative, and the Apostles' Creed, there also can be a true ordination to the Office [of the Ministry], though [that church] may be impure so far as outward ceremonies are concerned. But if it remains uncorrupt in the essentials, then [by the ordination] there is committed [*übergeben*] [to the ordained] by the prayers of the church the power to teach the Word. We cannot deny that this is also true of the papistic church, though there the office is quite corrupt. **The reasons for our assertion are these:** (1) because ordination is not an act

³⁰ Augustine's Letter 59 is addressed to Victorinus and does not contain this quotation. I have not located this statement in any of the letters to Paulinus. Cf. above, pp. 74-75. MH

³¹ JTM added: [individual congregation]. MH

of the corrupt ministerium, but of the whole **Church**, which also a corrupt ministerium can perform" (*Tract. de cas. consc.*, pp. 1037, 1039–40).

[**Johann Wilhelm Baier**]: "The right or power to ordain [*bestellen*] ministers belongs also to the particular churches that have been separated from the fellowship of the others by unjust excommunication. For what has been conferred to the universal [Church] for the common purpose [*gemeinschaftlichen Zweck*] is spiritual edification. The particular churches legitimately assert their claim to [this edification] through which the universal [Church] is to be built—indeed, provided that [the particular churches] belong to the universal Church. For the unjust excommunication that they suffer does not make them cease being true churches; hence they also do not lose the rights that belong to all true churches of Christ" (*Compendium theologiae positivae*, [part] 3, 11.4, p. 150).

Tertullian: "In this [member] as in the other is the Church, but the Church is Christ. Hence when you bow down at the feet of brethren, you take hold of Christ and supplicate Christ" (*De poenit.* 10).³²

[**Tertullian**]: "Note well that the Lord has left the Keys of the kingdom of heaven to Peter and through him to the Church; every one" (of the disciples) "henceforth bears them, since every one of them was asked and every one of them confessed" (*Scorpiace* 10).³³



³² Cf. ANF 3:664. The Latin literally says, "In one and a second . . ." describing a collective relationship like the "two . . . gathered" in Jesus' name among whom He is present (Matthew 18:20). MH

³³ Cf. ANF 3:643. MH

THESIS VIII

Although God gathers for Himself a holy church of elect at a place where His Word is not taught in its complete purity and the Sacraments are not administered altogether according to the institution of Jesus Christ, if only God's Word and the Sacraments are not denied entirely but both essentially [wesentlich] remain, nevertheless every believer is bound, at the peril of losing his salvation, to flee all false teachers, avoid all heterodox congregations or sects, and confess [bekennen] and adhere to orthodox congregations and their orthodox preachers [Predigern] wherever such may be found.

- A. *Also in heterodox and heretical churches there are children of God, and also there the true Church is made manifest by the pure Word and the Sacraments that still remain.*
- [B. *Every believer for the sake of his salvation must flee all false teachers, and avoid fellowship with heterodox congregations or sects.*
- C. *Every Christian for the sake of his salvation is in duty bound to acknowledge and adhere to orthodox congregations and orthodox preachers, wherever he can find such.]¹*

EDITOR'S NOTE: "The ears of the people are holier than the hearts of the priests." This statement from Hilary appears repeatedly in the citations Walther amasses in section A of this threefold thesis. In preparation for the serious admonitions to flee heterodox communions that follow in sections B and C, Walther carefully and elaborately expands on the argument laid out in Thesis VI regarding the presence of genuine believers in heterodox churches. The orthodox Lutheran Church is not a sect that

¹ Points B and C of Thesis VIII are added here so that the reader may see the full argumentation of the thesis at once. In the German editions and the Mueller translation, points B and C only appeared later, at the specific points where Walther interacted with them. MH

Schluß der Synode.

Am Sonnabend-Nachmittag, den 6. Mai, konnte die Synode, nachdem sie alle ihre Geschäfte glücklich beendet hatte, mit herzlichem Danke gegen den treuen Gott, der auch diesmal wieder Kraft und Gnade verliehen, die große Menge der zum Theil überaus wichtigen Arbeiten mit seiner Hülfe zu bewältigen, schließen. Er gebe nun auch seinen Segen dazu, daß alle gefaßten Beschlüsse ihm zur Ehre und seiner Kirche zur Wohlfahrt gereichen! — Die Vertagung fand statt mit dem Gesang des letzten Verses aus dem Liede No. 346 und dem Gebet des heiligen Vaterunsers, gesprochen durch den Allgemeinen Präses H. C. Schwan.

Gott allein die Ehre!

Amen, Halleluja, Amen!!

Dreißundzwanzigster**Synodal-Bericht**

der

Allgemeinen deutschen ev.-luth. Synode

von

Missouri, Ohio und andern Staaten,

versammelt als

Achte Delegatensynode

zu

Fort Wayne, Ind., im Jahre 1896.



St. Louis, Mo.

CONCORDIA PUBLISHING HOUSE.

1896.

wollen. — Was unsere Brüder in der sächsischen und dänischen, sowie die in der australischen und der Hermannsbürger Freikirche betrifft, mit welchen wir ebenfalls einen steten Verkehr unterhalten, so wird uns unser Correspondent mit dem Auslande darüber sicherlich weitere erfreuliche Nachrichten zu geben haben. Nicht ohne etwas Schamröthe aber haben wir doch wohl alle seiner Zeit gedruckt lesen müssen, daß bei der von uns geübten „Handreichung“ in letzter Zeit unsere sächsischen Brüder (welche doch für unsere Missionen so reichlich beitragen) von uns dermaßen übersehen worden sind, daß sie ihre eigenen nöthigsten Ausgaben auf wirklich peinliche Weise haben einschränken müssen. Desto zuversichtlicher hoffe ich denn, daß ein Vorschlag, welcher eine reichlichere und mehr geordnete Unterstützung dieser Brüder zum Zweck hat, eine gute Aufnahme seitens der Ehrw. Synode finden werde.

Außer den bereits erwähnten liegen nun noch folgende Eingaben vor, die, wenn die Ehrw. Synode nicht anders verfügt, ebenfalls durch zu ernennende Committeeen zuvor werden begutachtet werden: Drei Appellationen, eine theologische Frage, eine Bitte um Unterstützung einer hart bedrängten Gemeinde, ein Gesuch um Erwirkung von half fare für unsere Herren Schullehrer, Gesuche um Aufnahme, eine Klage des General Council über Pastoren unserer Synode, eine Eingabe des früheren Prof. Diederich, ein Antrag auf Vereinfachung der Quittungen und Districtskassen, desgleichen betreffs des Luther-Denkmal-Vereins, eine Bitte um ein Gutachten, ein Vorschlag, die Zahl der Delegaten zur Allgemeinen Synode zu verringern, eine Einladung zur Feier des 50jährigen Bestandes unserer Synode. Wir werden also fleißig zu arbeiten haben.

Da aber doch sicherlich keiner von uns, außer im höchsten Nothfalle, eine Lehr-Betrachtung entbehren möchte, so freut es mich, hiedurch mittheilen zu können, daß Herr Prof. F. Pieper eingewilligt hat, einige kurze Vorträge über „Kirche und Kirchenregiment“ zu halten. Je ein halb Stündlein morgens wird dazu genügen.

Endlich bleibt mir nur noch übrig, über meine Verwaltung des Allgemeinen Präsidii Rechenschaft abzulegen. Da kann ich denn berichten, daß ich in dem abgelaufenen Termin sämmtlichen Districts-Synoden habe beiwohnen können, bis auf zwei, der californischen und der canadischen. Hinsichtlich der ersten ist es ja von der Allgemeinen Synode selbst der Discretion des Districts und des Allgemeinen Präsidii überlassen, wie oft dieselbe zu besuchen sei. Die Canada-Synode aber hätte ich vom Westen aus, wo ich mich damals befand, selbst dann nicht mehr erreichen können, wenn sie nicht mit der Synode von Nebraska zusammengefallen wäre. Doch hat mich der Herr Allgemeine Vicepräsident Beyer dabei aufs Beste vertreten, wie denn meine beiden werthen Kollegen im Allgemeinen Präsidio stets bereit gewesen sind, mir mit Rath und That zu dienen. In Betreff der Districts-Verhandlungen kann ich auch diesmal bezeugen, daß überall Alles in williger

Unterwerfung unter Gottes Wort, ehrlich, ordentlich, brüderlich und ohne irgend einen Anstoß hergegangen ist. Die Lehranstalten und Pastoral-Conferenzen habe ich besucht, so viel nöthig und mir möglich war. Meine Correspondenz hat sich vermehrt, zum Theil auch dadurch, daß man mehr als sonst an das Allgemeine Präsidium appellirte, ohne sich vorher an die in der Constitution festgesetzten Instanzen gewendet zu haben. Sonst aber hat man mir eigentlich überall mein Amt so leicht, als möglich zu machen gesucht. Ich habe also auch diesmal über nichts zu klagen, als darüber, daß nicht Alles so gut geworden ist, als ich es hätte machen sollen und wollen.

Kirche und Kirchenregiment.

Vortrag, gehalten von Prof. F. Pieper.

Die rechte Lehre vom Kirchenregiment ist practisch von großer Bedeutung. Durch falsches Kirchenregiment ist der Kirche viel Schaden zugefügt worden. Von einer Form des Kirchenregiments, der Form der Staatskirche, hat König Friedrich Wilhelm IV. von Preußen gesagt, wenn die Kirche sterblich wäre, so wäre sie unter dem Regiment des Staates längst zu Grunde gegangen.

Unter uns nun ist die rechte Lehre vom Kirchenregiment eine bekannte Wahrheit, und die kirchliche Praxis stimmt herrschender Weise mit der rechten Lehre überein. Dennoch dürfte es nicht überflüssig sein, wenn wir uns die Lehre vom Kirchenregiment in ihren Hauptzügen bei unserer allgemeinen Versammlung vor Augen führen. Der fruchtbare Boden für falsches Kirchenregiment, das verderbte menschliche Herz, ist auch noch bei uns vorhanden. Sodann führt uns die Erwägung, was rechtes Kirchenregiment sei, mitten in das Herz der christlichen Lehre hinein. Auch hier tritt uns sofort vor Augen, was Christus, was das Evangelium und die christliche Kirche sei. Auch hier werden wir reichlich Veranlassung finden, die Gnade Gottes zu preisen, die uns zu Theil geworden ist.

Wie alles, was in das Gebiet der christlichen Lehre gehört, überaus einfach ist, so auch die Lehre vom Kirchenregiment. Das Gegentheil wird nicht durch den Umstand bewiesen, daß über dieselbe bis auf diesen Tag innerhalb der Kirche viel gestritten worden ist. Gibt es doch keine christliche Lehre, selbst keine sogenannte Centrallehre, wie z. B. die Lehren von der Rechtfertigung, von der Person und dem Werk Christi, die nicht durch menschliche Künste schwer und dunkel gemacht worden wäre. Insonderheit spielt bei der Lehre vom Kirchenregiment das menschliche Interesse, be-

stehende Mißstände zu rechtfertigen, eine große, die christliche Erkenntniß trübende Rolle.

Der rechte Ausgangspunkt für die Darlegung der Lehre vom Kirchenregiment ist die Lehre von der Kirche. Wie und womit die Kirche zu regieren sei, wird am besten verstanden, wenn man weiß und festhält, was die Kirche, um deren Regierung es sich handelt, sei.

Was ist die Kirche? Die Kirche sind die Gläubigen, oder was dasselbe ist: die Christen, die Kinder Gottes. Die Kirche sind die Leute, welche sich Christus durch das Evangelium aus der Welt herausgerufen, durch den Glauben gerechtfertigt und mit allen von ihm erworbenen geistlichen Gütern beschenkt hat. Es sind die Leute, in deren Herzen der Heilige Geist, ja, die ganze heilige Dreieinigkeit wohnt, die im Glauben an Christo als ihrem geistlichen Haupte hangen und sein geistlicher Leib sind. Diese Leute — und keine anderen — sind die christliche Kirche. Wer Christi Geist nicht hat, der ist nicht sein. Die Gläubigen, und nur die Gläubigen, sind die Kirche. Darum ist das Regiermittel für die christliche Kirche nicht äußere Gewalt und äußerer Zwang, nicht Menschengebote, nicht menschliche Weisheit, Klugheit, Geschicklichkeit, Ansehen &c., sondern allein Gottes Wort. Die Christen, die Kinder Gottes können und sollen mit nichts Anderem, als mit dem Wort ihres Herrn und Heilandes, mit Gottes Wort regiert werden. Luther sagt kurz und bündig: „Die Christen kann man mit nichts, ohne allein mit Gottes Wort, regieren.“*) Und etwas ausführlicher: „Das heißet nun das Kirchenamt oder Kirchenregiment: ein solch Regiment, da man allein das Wort hat, und damit also regiert, daß man keine Gewalt braucht, noch Hände anlegt, noch einige Macht oder Hoheit vor Andern sucht. Warum das? Darum, daß Gott seine Kirche will erhalten und regieren allein durch sein Wort und nicht durch menschliche Macht.“**) Menschen können bei der Regierung der Kirche nur insofern in Betracht kommen, als sie Christi Wort verkündigen und führen. Luther sagt von den „Priestern und Bischöfen“: „Ihr Regieren ist nichts Anderes, denn Gottes Wort treiben, damit die Christen führen und Kezerei überwinden.“†) Das Scepter des Reiches Christi hier auf Erden geht nicht von Rom aus, auch nicht von den grünen Tischen der Consistorialräthe und anderer sogenannter kirchlichen Oberen, sondern das Scepter des Reiches Christi geht von Zion, dem Heiligthume Gottes, aus.

Die ganze Kirchenregimentsfrage hat Christus selbst entschieden, wenn er spricht: „Einer ist euer Meister, Christus; ihr aber seid alle Brüder“, Matth. 23, 8. Hier ist so klar, wie möglich, und so bestimmt, wie möglich, ausgesprochen, daß es in der Kirche nur einen regierenden Herrn gibt.

*) St. Louiser Ausg. X, 406.

**) St. Louiser Ausg. XIII, 1239.

†) St. Louiser Ausg. X, 406.

Das ist Christus. Luther sagt: „Wir (Christen) haben einen Herrn, der ist Christus, der unsere Seelen regiert.“*) Alles, was nicht Christus ist, hat auch in der Kirche nichts zu regieren und zu gebieten. Die Kirche ist die strengste Monarchie, das heißt, ein Reich, in dem es nicht mehrere oder viele, sondern nur einen Herrscher gibt. „Einer ist euer Meister, Christus.“ Was das Verhältniß der Christen zu einander anlangt, so sind sie „Brüder“. Unter ihnen gibt es keine Ueberordnung und Unterordnung. Sie sind vielmehr alle einander nebengeordnet. Sie bilden, sagt der selige Dr. Walther, eine „große heilige Bruderschaft“, in welcher es keine Gebietenden und Gehorchenden gibt. „Ihr sollt euch nicht Rabbi nennen lassen“, Matth. 23, 8. „Die weltlichen Fürsten herrschen, und die Oberherren haben Gewalt. So soll es nicht sein unter euch“, Matth. 20, 25. 26. Der Alleinherrscher Christus übt aber sein Herrscher- und Regieramt aus durch sein Wort, wie er es in der Heiligen Schrift der Kirche gegeben und in derselben bis ans Ende zu lehren befohlen hat. Wie er sich seine Kirche durch sein Wort sammelt und fortwährend mit geistlichem Leben erfüllt, so regiert er sie auch durch sein Wort. Und damit ihm die Alleinherrschaft bleibe und sich nicht nebenbei doch wieder Menschenherrschaft einschleiche, — weil er Menschen zur Verkündigung seines Wortes gebraucht — so befiehlt er allen, die in der Kirche den Mund zum Reden öffnen, daß sie nur Gottes Wort, nicht aber eigenes Wort, laut werden lassen. „So jemand redet, daß er's rede als Gottes Wort“, 1 Petr. 4, 11. So bleibt Christus der einzige „Meister“, und die Christen „Brüder“.

Hält man dies fest, daß die Christen allein mit Gottes Wort aus der klaren Schrift regiert werden sollen, so stürzen alle großen und kleinen hierarchischen Bauten, die man in der Kirche aufgeführt hat, zusammen. Der ganze endlose Streit über die Rangordnung unter den Personen und Aemtern in der Kirche, speciell auch der Streit, ob es außer dem Amt des Wortes noch ein von Gott gestiftetes besonderes Regieramt in der Kirche gebe, ist dadurch zu Ende gebracht und gegenstandslos geworden, daß man festhält: Kein Mensch, mag er sein, wer er wolle, hat für seine Person in der Kirche etwas zu sagen. Christus hat ihnen allen — was eigenes Gebieten betrifft — den Mund geschlossen, wenn er selbst spricht: „Einer ist euer Meister, Christus“ &c., und durch den Apostel Petrus: „So jemand redet, daß er's rede als Gottes Wort.“ Hier geht's nicht bloß dem Papst an die Krone, sondern auch allen „kirchlichen Oberen“ in der sogenannten protestantischen Kirche an die Räppchen.

Aber man wirft ein: Es gibt in der Kirche doch Dinge zu ordnen, die der Meister, Christus, in seinem Wort nicht geordnet hat. Allerdings! Es sind dies die sogenannten Mitteldinge, z. B. Zeit und äußere Form

*) St. Louiser Ausg. IX, 1103.

des Gottesdienstes, die Verbindung der Gemeinden zu Synoden &c. Wer soll hier die nöthigen Ordnungen treffen? Das hat Christus mit seinem Worte: „Ihr seid alle Brüder“ bereits sehr bestimmt angedeutet. Diese Dinge sind jedenfalls nicht so zu ordnen, daß die Einen sie den Andern auflegen oder gebieten, mögen die Ersteren nun Pastoren oder Synoden sein, denn dadurch würde wieder der Grundsatz der Kirche: „Ihr seid alle Brüder“ aufgehoben und die Kirche abermal in zwei ungleiche Klassen von Leuten eingetheilt werden, in gebietende Herren und unterworfenen Diener. Es bleibt nur eine Weise der Ordnung der Mittel Dinge übrig, die nicht mit dem Grundgesetz der Kirche in Widerspruch tritt. Das ist die Weise der freien Uebereinkunft aller Betheiligten. Die Christen der einzelnen Gemeinden ordnen diese Dinge selbst, wie es ihnen nach Zeit, Ort und Gelegenheit am Ersprißlichsten zu sein scheint. Sie nehmen hierbei Rath, unter Umständen viel Rath, an. Sie lassen sich hier insonderheit von ihrem officiellen Rathgeber, dem Pastor der Gemeinde, berathen. Sie suchen in Bezug auf die kirchlichen Gebräuche auch möglichst den äußeren Zusammenhang mit der alten Kirche zu wahren, sowie in thunlichste Gleichförmigkeit mit den rechtgläubigen Schwestergemeinden der Gegenwart zu kommen. Aber ihrem christlichen Daseinhalten und ihrer freien Entscheidung ist alles anheim zu geben, was Christus selbst nicht geboten hat. Bleiben hier Meinungsverschiedenheiten, so weicht die Minderheit der Mehrheit, oder auch die Mehrheit der Minderheit, wie es die Liebe erfordert. Hier ist ein weites Feld für das Unterthansein in der Liebe, welches die Heilige Schrift den Christen so oft einschärft. So bleiben die Christen bei der Ordnung der Mittel Dinge Brüder.

Daß dies und nichts Anderes die Lehre Luthers und unserer Kirche von der Ordnung der Mittel Dinge sei, ist unter uns allbekannt. Luther sagt bekanntlich: „Weder der Pabst, noch ein Bischof, noch irgend ein Mensch, hat Gewalt, eine Silbe über einen Christenmenschen anzuordnen, es geschehe denn mit seinem Willen; und was anders geschieht, das geschieht aus einem tyrannischen Geiste.“*) Die Concordienformel sagt: „Wir glauben, lehren und bekennen, daß die Gemeine Gottes jedes Orts und jeder Zeit derselbigen Gelegenheit nach guten Zug, Gewalt und Macht habe, dieselbigen“ (nämlich die von Gott nicht gebotenen Dinge) „ohne Leichtfertigkeit und Aergerniß ordentlicher und gebührlicher Weise zu ändern, zu mindern und zu mehrern, wie es jederzeit zu guter Ordnung, christlicher Disciplin und Zucht, evangelischem Wohlstand und zu Erbauung der Kirche am Nützlichsten, Förderlichsten und Besten angesehen wird.“**)

Man hat in neuerer Zeit gesagt, daß unser Bekenntniß die Frage vom Kirchenregiment offen, oder doch nahezu offen, lasse. Andere haben sich

*) St. Louiser Ausg. XIX, 68.

**) Müller, S. 698 f.

so ausgedrückt: im lutherischen Bekenntniß finde sich keine positive Lehre vom Kirchenregiment. Das ist ein großer Irrthum. In unserm Bekenntniß wird der Begriff des Regiments in der Kirche positiv und negativ sehr scharf dargelegt. Es wird immer wieder eingeschärft, daß alles Regieren in der Kirche lediglich durch Gottes Wort geschehe, und es wird jedes Regieren verworfen, wodurch Christen etwas über Gottes Wort hinaus geboten wird. Bleiben diese Wahrheiten unangetastet, dann freilich wollten unsere Väter um der Liebe und des Friedens willen sich in jede äußere Ordnung der Dinge schicken. Die Papisten forderten bekanntlich für ihre Bischöfe die Gewalt, in der Kirche Satzungen zu machen, und beriefen sich dabei auf Schriftstellen, wie Luc. 10: „Wer euch höret, der höret mich“; Ebr. 13: „Gehorchet euren Lehrern und folget ihnen“ &c. Unser Bekenntniß antwortet hierauf, daß in diesen und ähnlichen Stellen der Schrift den Predigern gegenüber Gehorsam gefordert werde, wenn und insofern sie Gottes Wort vortragen, nicht aber, wenn sie nach eigenem Gutdünken Satzungen machen wollten. Die Worte unsers Bekenntnisses lauten bekanntlich: „So ist es auch gewiß, daß dieses Wort des Herrn Christi, Luc. 10: ‚Wer euch höret, der höret mich‘, nicht von Menschenatzungen redet, sondern ist stracks darwider, denn die Apostel empfahlen da nicht ein mandatum cum libera, das ist, einen ganz freien, ungemessenen Befehl und Gewalt, sondern haben ein gemessen Befehl, nämlich nicht ihr eigen Wort, sondern Gottes Wort und das Evangelium zu predigen. . . . Darum kann dies Wort (wer euch höret, der höret mich) von Satzungen nicht verstanden werden. Denn Christus will da, daß sie also lehren sollen, daß man durch ihren Mund Christum selbst höre. So müssen sie ja nicht ihr eigen Wort predigen, sondern sein Wort, seine Stimme und Evangelium, soll man Christum hören. Dies tröstliche Wort, welches aufs Allerstärkste unsere Lehre bestätigt und viel nöthiger Lehre und Trosts für die christlichen Gewissen in sich hat, das deuten die groben Esel auf ihre närrischen Satzungen, auf ihre Speis, Trank, Kleider und dergleichen Kinderwerk. Auch ziehen sie diesen Spruch an, Ebr. 13: ‚Gehorchet denen, die euch fürgehen.‘ Dieser Spruch fordert, daß man soll gehorsam sein dem Evangelio. Denn er gibt den Bischöfen nicht eine eigene Herrschaft oder Herren-Gewalt außer dem Evangelio.“ Und zu der Stelle Matth. 23: „Auf Moses Stuhl sitzen die Schriftgelehrten &c. Alles nun, was sie euch sagen, das ihr halten sollt, das haltet und thut's“ bemerkt unser Bekenntniß u. A.: „So richtet dieser Spruch auch nicht ein Regiment an außer dem Evangelio, darum können sie ihre Gewalt, die sie außer dem Evangelio aufgerichtet haben, nicht durchs Evangelium beweisen, denn das Evangelium redet nicht de traditionibus“ (von Menschenatzungen), „sondern von Gottes Wort zu lehren.“*) So sehr schärft unser Bekenntniß die göttliche Wahrheit ein,

*) Apologie, Art. 27. Müller, S. 289 f.

„Jedermann sei unterthan der Obrigkeit, die Gewalt über ihn hat.“ Röm. 13, 1. Aber die kirchliche Lehre und Praxis zu bestimmen, hat Christus der weltlichen Obrigkeit weder ganz, noch zum Theil übergeben. Die Kirche will er selber durch sein Wort, wie er es in der Kirche hinterlassen hat, regieren. Daher nehmen wir von der weltlichen Obrigkeit, der wir doch in bürgerlichen Dingen durchaus unterthan sind, in kirchlichen Dingen keinerlei Gebote an. Wir dürfen uns in kirchlichen Dingen von der weltlichen Obrigkeit nichts gebieten lassen. Es wäre denn, daß wir von Christo als unserm einigen Meister abfallen wollten. Hüten wir uns vor jeder Form des Staatskirchentums! Die Warnung ist auch für unser Land nöthig. Ist doch gegenwärtig wieder eine mächtige Bewegung im Gange, die Trennung von Kirche und Staat, die hierzulande Gott sei Dank besteht, wenigstens theilweise rückgängig zu machen.

Noch mehr ist ein falsches Kirchenregiment von der Kirche selbst ausgegangen und unter dem Namen der Kirche ausgeübt worden. Einzelne Personen in der Kirche, oder doch eine Anzahl derselben, haben sich angemäßt, mit ihren eigenen Geboten die Kirche zu regieren.

Der Hauptgreuel ist hier der Greuel des Papstthums. Der Papst behauptet, von Christo selbst zum Obersten der Christen gesetzt zu sein, dermaßen, daß alle Christen nach Lehre und Leben ihm unterworfen sind und keiner selig werden kann, der nicht des Papstes Oberhoheit anerkennt. Christus selbst, so behaupten des Papstes Creaturen, habe nur einige Hauptsachen bestimmt; die meisten Dinge habe er der Kirche, das ist, dem Papst, zu bestimmen überlassen. So regiert der Papst mit seinen Geboten die Kirche. Die Bischöfe sind nur die Regierungsorgane des Papstes. Und kein Christ soll sich herausnehmen, die Gebote des Papstes an der Heiligen Schrift prüfen zu wollen, denn die sei für den gewöhnlichen Christen dunkel und könne nur von der Kirche, das ist schließlich wieder von dem „unfehlbaren“ Papst, recht verstanden und ausgelegt werden. Dies ist der Greuel des Antichrists, wie er 2 Thess. 2 beschrieben wird, „der da ist ein Widerwärtiger und sich überhebet über alles, das Gott oder Gottesdienst heißet, also, daß er sich setzet in den Tempel Gottes, als ein Gott, und gibt sich vor, er sei Gott“. Wie ein Christ sich zu dem Papst und seiner angemäßen Herrschaft stellen soll, sagt Luther in den Schmalkaldischen Artikeln: „Darum müssen wir hie nicht seine Füße küssen oder sagen: Ihr seid mein gnädiger Herr! sondern wie im Zacharia der Engel zum Teufel sprach: Strafe dich Gott, Satan.“*)

Aber das falsche Kirchenregiment, insofern es unter dem Namen der Kirche ausgeübt wird, beschränkt sich nicht auf das Papstthum.

Die sogenannte griechische Kirche setzt an Stelle des Papstes die Bischöfe. Sie meint, „der Heilige Geist hat den einzelnen Kirchen, die

*) M., S. 309.

wahrhafte Kirchen sind und wahrhaftig aus seinen Gliedern bestehen, die Bischöfe . . . wahrhaftig zu Herrschern und Häuptern gesetzt“.) Dem Regiment der Bischöfe sollen alle Gläubigen um des Gewissens willen unterworfen sein.

In dem größten Theil der sogenannten protestantischen Christenheit wird eine falsche Lehre vom Kirchenregiment geführt und geübt. Zwar finden wir hier gewöhnlich die Bestimmung, daß die Kirche nichts festsetzen dürfe, was dem Worte Gottes widerstreite. So z. B. bei den Episcopalen, Presbyterianern, Methodistern etc. Aber dieselben Leute versehen es ganz grob in der Ordnung der Dinge, die nicht in Gottes Wort geboten sind. Um nur Eins anzuführen: sie schreiben z. B. ihren allgemeinen kirchlichen Versammlungen die Gewalt zu, Ordnungen zu machen, denen die Christen um des Gewissens willen unterworfen seien. So heißt es im „Glaubensbekenntniß“ der Presbyterianer: „Es kommt den Synoden und Concilien zu, amtlicher Weise (ministerially), Streitigkeiten in Glaubenssachen und Gewissensfällen zu entscheiden, Regeln und Anordnungen festzusetzen zur besseren Einrichtung des öffentlichen Gottesdienstes und zur Regierung der Kirche Gottes, Klagen anzunehmen in Fällen schlechter Amtsverwaltung und darüber zu entscheiden als Autorität: welche Beschlüsse und Entscheidungen, wenn sie dem Worte Gottes gemäß sind, mit Ehrfurcht und Unterwerfung anzunehmen sind, nicht nur deshalb, weil sie mit Gottes Wort übereinstimmen, sondern auch wegen der Gewalt, von welcher sie herkommen (whereby they are made), weil dieselbe eine Ordnung Gottes ist, die dazu in seinem Wort bestimmt (appointed) ist.“**)

Aber auch in die lutherisch genannte Kirche ist das falsche Kirchenregiment eingedrungen in verschiedenen Graden und Abstufungen. Wir heben hier die Abirrung hervor, welche hier in America nach der Herrschaft strebte und in Deutschland unter einem Theil der separirten Lutheraner ihre Vertreter hat. Man lehrt ein von Gott neben dem Amt des Wortes Gottes eingesetztes Kirchenregiment, welches für einzelne Gemeinden, oder eine Summe von Gemeinden, Ordnungen zu machen habe, denen die Christen um des Gewissens willen unterthan sein müßten. Diesem Kirchenregiment komme göttliche Autorität auch da zu, wo es nicht Gottes Wort und Gebot vorhalte. Man setzt freilich die Einschränkung hinzu, das Kirchenregiment dürfe nichts vorschreiben, was wider Gottes Wort sei. Aber damit ist nichts gebessert. Es ist eben schon wider Gottes Wort, Christen etwas vorzuschreiben, was nicht Gott in seinem Wort geboten hat. Man hat sich für den Gehorsam, den die Christen angeblich den

*) Im griechischen Bekenntniß des Dositheus. Citirt bei Günther, Symbolik. Zweite Aufl., S. 340.

**) Confession of Faith, chap. 31.

Pastoren oder den kirchlichen Oberen in Mittelbdingen schulden, sowohl hier in America als auch in Deutschland auf das vierte Gebot berufen. Eltern könnten ja ihren Kindern Dinge gebieten, die nicht in Gottes Wort geboten seien, wenn diese Dinge nur nicht wider Gottes Wort angingen. Nun gehörten aber die Pastoren und andere kirchliche Vorgesetzte zu den geistlichen Vätern. So sei man ihnen auch, kraft göttlicher Ordnung, Gehorsam schuldig in allen Dingen, die nicht in Gottes Wort geboten sind, wenn sie nur nicht in Gottes Wort verboten seien. Dies Argument hat manche vernünftige und weise Leute betrogen. Aber es ist doch durchaus verkehrt und sehr leicht zu widerlegen. Wie steht denn die Sache? Eltern können allerdings ihren Kindern über Gottes Wort hinausgehende Befehle geben, weil sie von Gott ihren Kindern gegenüber mit gesetzgeberischer Gewalt ausgestattet sind, wenn es z. B. Col. 3, 20. heißt: „Ihr Kinder, seid gehorsam den Eltern in allen Dingen.“ Die Kinder sind nach Gottes Ordnung unter den Eltern. Aber die Kirche, oder vielmehr einzelne Personen in der Kirche, hat Gott nicht mit gesetzgeberischer Gewalt ausgestattet den Christen gegenüber, sondern hier heißt es: „Einer ist euer Meister, Christus; ihr aber seid alle Brüder.“ Für Kinder sind die Eltern allerdings an Gottes Statt in Bezug auf die Dinge, die Gott nicht geboten hat. Aber nicht sind so an Gottes Statt die Oberen in der Kirche den Christen gegenüber. Alle Christen sind ohne Vermittlung der kirchlichen Oberen nur unter Gott. Nur Einer ist ihr Meister, Christus; sie alle sind gleichgestellte (coordinirte) Brüder. Christus hat in der Kirche keine Stellvertreter hinterlassen, die an seiner Statt den Christen zu gebieten hätten, was er ungeboten gelassen hat. Wer sich als ein solcher Stellvertreter Christi aufspielt, greift Christo ins Regiment.

Man hat gesagt: „Kommt denn wirklich so viel darauf an, daß die Christen in den sogenannten Mittelbdingen sich nichts von Menschen gebieten lassen? Was schadet's groß, wenn man es den Christen zur Gewissenspflicht macht, menschlichen Ordnungen, die doch gut gemeint sind, sich zu unterwerfen?“ Man hat uns mehr als ein Mal entgegengehalten, daß wir zu viel Kraft und Zeit auf die Vertheidigung der christlichen Freiheit verwenden.

Die diesen Einwand erheben, beweisen damit ihr geringes Verständniß für geistliche Dinge. St. Paulus ermahnt im Briefe an die Galater die Christen mit vielen Worten, in der Freiheit zu bestehen, damit sie Christus befreiet hat, Gal. 5. Und Luther, als ein treuer Schüler St. Pauli, sagt bekanntlich, jeder Christ solle eher sein Leben lassen, als Menschengeboten in der Kirche unterthan werden. Vergewärtigen wir uns kurz die Gründe für diese Stellung.

Wer in der Kirche über Christi Wort hinaus gebieten will, der greift damit Christo ins Regiment und tastet Christi Majestät an. Christus hat mit seinem Blut die Kirche sich zum Eigenthum erworben, so daß Er ihr

Meister, ihr einziger Herr und Gebieter sei. Wer nun noch neben Christo der Kirche gebieten will, mag dies viel oder wenig sein, der drängt sich damit in Christi Heilands- und Herrscherstellung ein. Der thut, als ob er auch für die Christen gestorben und begraben und dann wieder auferstanden sei.

Ferner: Wer in der Kirche über Christi Wort hinaus gebieten will, der tastet die Herrlichkeit der Christen an, mit welcher ihr Heiland sie gekrönt hat. Alle, welche durch den Glauben an Christum Vergebung der Sünden und die Gotteskindschaft erlangt haben, haben damit auch das Borrecht erlangt, daß sie in allen geistlichen Dingen nur Christo und dessen Wort unterworfen und von allen Menschenfügungen befreit sind. Das ist die herrliche Freiheit der Kinder Gottes, die ihnen nicht mit Gold oder Silber, sondern mit dem theuren Blut Christi erworben und durch die Rechtfertigung geschenkt ist. Wenn nun Menschen das Recht beanspruchen, die Christen mit ihren — der Menschen — Geboten regieren zu dürfen, so machen sie dadurch Gottes freie Kinder zu Menschenknechten und muthen ihnen thatsächlich zu, von Christo als ihrem einigen Herrn und Meister abzufallen. „Dieber“, sagt Luther, „laß dir's nicht gering Ding sein, verbieten, da Gott nicht verbeut, christliche Freiheit brechen, die Christus Blut gekostet hat, die Gewissen mit Sünde beladen, da keine ist. Wer das thut und thun darf, der darf auch alles Uebel thun, ja, er verleugnet schon damit alles, was Gott ist, lehret und thut, sammt seinem Christo.“*)

Ferner: Wer in der Kirche über Gottes Wort hinaus gebieten will, der richtet damit die größte Unordnung in der Kirche an. Man entschuldigt freilich den Erlaß von Menschengeboten über Gottes Wort hinaus mit der guten Absicht, dadurch der guten Ordnung in der Kirche dienen und der sonst drohenden Unordnung wehren zu wollen. Ueber die der Kirche angeblich drohende Unordnung, wenn man nicht mit Menschengeboten dazwischen greift, noch später einige Worte. Hier halten wir zunächst so viel fest: Jede Ordnung der Dinge, nach welcher den Christen über Gottes Wort hinaus geboten wird, ist von vorneherein greuliche Unordnung, eine vollkommene Verkehrung der Hausordnung in der Kirche Christi. Der erste und alles beherrschende Paragraph in dieser Hausordnung lautet: „Einer ist euer Meister, Christus; ihr aber seid alle Brüder.“ Wer in der Kirche Christi über Gottes Wort hinaus gebieten will, der ist ein Revolutionär in der Kirche, der die zu Recht bestehende Ordnung, nämlich das alleinige Regiment Christi, über den Haufen werfen will. Luther nennt die Ordnung in der Pabstkirche, nach welcher dem Pabst und den Bischöfen die Gewalt zustehen soll, neben der Schrift die Gewissen bindende Gesetze zu erlassen, eine Ordnung „wider Gott“, ja, „des Teufels Ordnung.“**) Er

*) Wider die himml. Propheten, XX, 207.

**) XIX, 704.

begehrt, „daß sich alle Christen je mit allen Kreuzen segnen für dem Glauben, der da glaubt, der Papst hat Recht in seinem Regiment“. So bezeichnen auch wir jedes Regiment in der Kirche als Unordnung, wodurch den Christen etwas über Gottes Wort hinaus geboten wird, mag dies Gebot nun von Pastoren, von Synoden, von einem Kirchen-Collegium, Consistorium, Summus episcopus oder daß etwas ausgehen.

Und endlich: jedes Kirchenregiment, wodurch man über Gottes Wort hinaus den Christen Menschenfahrungen auflegt, gereicht der Kirche zum Schaden. Luther sagt vom Papstthum: „Wie aber der Papst in der Kirche regiert hat, nachdem er solches“ — nämlich die Obrigkeit über die Christen — „erlangt hat, ist vor Augen.“*) Ja, man hat's wahrlich vor Augen. Lassen wir uns warnen! Hat man einmal zugegeben, daß Menschen neben Christo in der Kirche gebieten dürfen, so ist aller falschen Lehre und Praxis Thür und Thor geöffnet. Wer sich erdreistet, den Christen in den sogenannten Mittel dingen etwas zu gebieten, der wird auch nicht davor zurückschrecken, in den eigentlichen Glaubenssachen aus seinem Kopfe Vorschriften zu machen. Ja, er hat schon den Glauben der Christen mitten ins Herz getroffen, dadurch, daß er ihre Gewissen an etwas anderes bindet als an Gottes Wort. Wo Menschenfahrungen aufkommen, da verliert Gottes Wort die Herrschaft. Das liegt in der Natur der Sache. Wo man sich von Menschen gebieten läßt, da geht das rechte christliche Gewissen unter. Da unterscheidet man nicht mehr scharf zwischen Gottes Wort und Menschenwort, da verkommen die Gewissen, da verliert man das Gewissen für die reine Lehre. Die Geschichte redet hier wahrlich deutlich genug. Wohin ist's gekommen unter dem Papstthum? Dahin, sagt Luther, „daß man das Wort Gottes verloren, und aus der Kirche ein weltliches Regiment gemacht, neue Gottesdienste angerichtet, und alles gesucht und erdichtet hat, damit man das Geld von den Leuten hat bringen, und die Pfaffenpracht hat mehren können“.**) Wohin ist's gekommen in den Staatskirchen? Dahin, daß man gegen Gottes Wort überaus gleichgültig ist, dagegen desto strenger über den staatskirchlichen Ordnungen hält. Es hat sich in Folge dessen auch ein wunderlicher Sprachgebrauch herausgebildet. Wenn man in Staatskirchen von „Oben“ redet, so meint man in der Regel nicht Gott und Gottes Wort, sondern das weltliche Regiment und die kirchlichen „Oberer“. Das ist bezeichnend für die Lage der Dinge. Menschenwort hat Gottes Wort bei Seite geschoben. Das ist der furchtbare Fluch der Verkehrung der göttlichen Ordnung in der Kirche!

Wie wichtig ist es daher, an der rechten Lehre vom Kirchenregiment festzuhalten und allein Gottes Wort, nicht aber menschlichen und kirchlichen Ordnungen gewissensverbindliche Kraft zuzuschreiben.

Wie gestaltet sich nun die Regierung der Kirche in der Praxis, wenn sie nur mit Gottes Wort regiert wird?

*) XIII, 1242.

**) XIII, 1239 f.

Sehen wir zunächst auf die einzige von Gott gestiftete äußere Gemeinschaft, die christliche Ortsgemeinde, in welcher es recht zugeht. Der Pastor der Gemeinde, weil er von Amtswegen das Wort Gottes führt, so regiert er natürlich auch von Amtswegen die Gemeinde mit dem Wort. So oft er öffentlich von der Kanzel aus Gottes Wort darlegt, wie es nach Gottes Willen in Lehre und Leben im Allgemeinen und im Besonderen zu halten sei, so regiert er. Wenn er im Verkehr mit den einzelnen Personen Gottes Wort und Willen kund thut und geltend macht, so regiert er ebenfalls. Er regiert, nicht für seine Person, nicht weil er begabter, oder gelehrter, oder angesehener ist, sondern weil er von Amtswegen das Wort Gottes zu führen hat und insofern er dies thut. So spricht Luther allen Pastoren in ihren Gemeinden das geistliche Regiment zu. Er schreibt, im Gegensatz zu dem römischen Wahn, daß den Bischöfen und dem Papst das Regiment in der Kirche zukomme: „Also soll ein jeglicher Pfarrherr oder geistlicher Regent ein Bischof, das ist ein Aufseher, ein Wächter sein, daß in seiner Stadt und bei seinem Volk das Evangelium und der Glaube Christi gebauet werde und bleibe wider die Feinde, Teufel und Ketzerei.“*) Und unser Bekenntniß sagt: „Darum kann die Kirche nimmermehr haß regieret und erhalten werden, denn daß wir alle unter einem Haupt, Christo, leben, und die Bischöfe“ (das ist, Pastoren) „alle, gleich nach dem Amt, ob sie wohl ungleich nach den Gaben, fleißig zusammenhalten in einträchtiger Lehre, Glauben, Sacramenten, Gebeten und Werken der Liebe“ 2c.**)

Die Ortsgemeinde tritt zur Verrichtung der ihr obliegenden Dinge nach dem Vorbild der apostolischen Gemeinden zu Gemeindeversammlungen zusammen. Wer regiert in den Gemeindeversammlungen? Der Pastor hat natürlich auch in den Gemeindeversammlungen von Amtswegen das Wort Gottes zur Geltung zu bringen. So regiert er auch hier mit dem Wort Gottes. In diesen Versammlungen reden aber auch die Gemeindeglieder. Und es kommt nicht selten vor, daß ein Glied der Gemeinde oder mehrere derselben das Wort Gottes oder die Worte Gottes beibringen, welche die zur Verathung stehenden Dinge klar beleuchten und entscheiden. So regieren in diesem Falle die betreffenden Gemeindeglieder. Freilich, wiederum nicht für ihre Person, sondern weil sie das alles regierende und entscheidende Wort Gottes geltend machen. Christus regiert in seiner Gemeinde durch sie.

Es sei mir erlaubt, in diesem Zusammenhange auf ein persönliches Erlebnis hinzuweisen. Ich habe den ersten Unterricht über das Regieren in der Kirche vor allem theologischen Studium von einem einfachen Christen empfangen. Innerhalb einer Gemeinde in Wisconsin waren an einem

*) St. Louiser Ausg. XVIII, 1283.

**) Schmalf. Art., Theil II, S. 308.

Sonntag-Nachmittag einige lutherische Christen in einem Farmhause versammelt. Auch einige Gymnasialschüler waren zugegen. In der Unterhaltung kam man auf das Kirchenregiment und speciell auf die Frage, wer in der Gemeindeversammlung regiere. Ein schlichter Christ sprach da seine Verwunderung darüber aus, wie man in der Kirche noch über das Kirchenregiment streiten könne. Es sei doch klar: „In der Kirche regiert der, der Gottes Wort hat. In einer Gemeindeversammlung regieren die, welchen Gott es gibt, daß sie das rechte, die Sache entscheidende Wort Gottes anführen können.“ So hätten in ihrer letzten Gemeindeversammlung mehrere Gemeindeglieder regiert, weil sie das alle Andern überzeugende Wort Gottes anführten.

So gestaltet sich das Regieren der Gemeinde in den Dingen, die durch Gottes Wort entschieden sind. Wie die Ordnung der Mittelbünde durch gegenseitiges Uebereinkommen geschehe, ist schon früher dargelegt worden. Hier sei nur noch auf Eins hingewiesen. Die Ortsgemeinde mag auch Hilfsämter für das öffentliche Predigtamt, z. B. das Amt der Vorsteher, aufrichten. Wohl alle unsere Gemeinden haben diese kirchliche Einrichtung. Nur ist zuzusehen, daß auch den Vorstehern keine über Gottes Wort hinausgehende Gewalt gegeben werde.

Aber wie stellt sich nun die Regierung der Kirche, wenn die Ortsgemeinden sich zu größeren kirchlichen Körperschaften, z. B. zu Synoden, zusammengeschlossen haben? Man könnte einwerfen: Wenn die Kirche nur mit Gottes Wort regiert werden soll, welchen Sinn hat dann eure ganze Synodaleinrichtung, die, wie ihr selbst immer betont, nicht in Gottes Wort geboten ist? Ihr habt die Verbindung der Gemeinden zu Synoden, in welchen die Gemeinden einander berathen und überwachen. Ihr habt außer dem von Gott gebotenen Predigtamt in eurer Mitte noch andere nicht von Gott geordnete Ämter aufgerichtet. Ihr habt Visitatoren, Districtspräsidenten, einen Allgemeinen Präses und andere Synodalbeamte. Wenn Gottes Wort zur Regierung der Kirche genügt, welchen Sinn haben dann diese menschlichen Ordnungen? Wir antworten: Wahrlich nicht den, als ob Gottes Wort zur Regierung der Kirche nicht hinreichte und man der armen, verlassenen Kirche mit einigen menschlichen Ordnungen aufhelfen müsse. Unsere ganze Synodaleinrichtung hat den entgegengesetzten Zweck. Durch dieselbe wollen wir einander behülflich sein, daß Gottes Wort, und nichts als Gottes Wort, bei uns regiere. Die Visitatoren sehen darauf, ob's in dem ihnen zugewiesenen Visitationskreis nach Gottes Wort in den Gemeinden zugehe; die Districtspräsidenten haben dasselbe Amt im ganzen District und der Allgemeine Präses unter gewissen Beschränkungen in der ganzen Synode. Deshalb wählen wir auch zu Visitatoren und Präses nicht etwa Leute, die sich gut auf Acten verstehen und vor Andern in unserm „Synodalhandbuch“ bewandert sind, sondern Leute, die in Gottes Wort wohl erfahren und vor Andern geschickt sind, dasselbe in Bezug auf

vorliegende Verhältnisse klar darzulegen und anzuwenden. Die Aufsichtsämter, welche durch unsere Synodalordnung eingerichtet sind, sollen nicht Gottes Wort ergänzen, sondern Gottes Wort dienen, daß es — Gottes Wort — im Schwange gehe. Als Zweck unserer Synodalgemeinschaft wird in unserm Synodalhandbuch unter Anderm angegeben: „Erhaltung und Förderung der Einheit des reinen Bekenntnisses“, „Ueberwachung der Einheit und Reinheit der Lehre“. Nicht ist der Zweck der Synode, die Gemeinden über Gottes Wort hinaus durch Synodalbeschlüsse zu binden. Vielmehr heißt es in Bezug auf diesen Punkt in der Constitution der Synode ganz ausdrücklich: „Die Synode ist in Betreff der Selbstregierung der Gemeinden nur ein beratender Körper. . . . Findet eine Gemeinde den Beschluß (der Synode) nicht dem Worte Gottes gemäß oder für ihre Verhältnisse ungeeignet, so hat sie das Recht, den Beschluß unberücksichtigt zu lassen und resp. zu verwerfen.“*) Durch die kirchliche Einrichtung der Synode soll nicht eine Herrschaft neben Gottes Wort und über dasselbe hinaus aufgerichtet werden, sondern die ganze Synodaleinrichtung soll der alleinigen Herrschaft des Wortes Gottes dienen.

Auch Luther redet von Ämtern, die als Hilfsämter für das Amt des Wortes in der Kirche aufgerichtet werden. Das sind die Ämter, „so über alle Ämter sehen sollen“ und „zusehen, daß alle Ämter recht gehen“. Er nennt die in christlicher Freiheit neben dem Predigtamt aufgerichteten Aufsichtsämter auch ein Regieramt. Dabei schärft er aber auf das Nachdrücklichste ein, daß diesem „Regieramt“ keine Herrschaft einzuräumen sei. Er nennt es des Predigtamtes „Knecht“, der das Predigtamt „anregen und wecken soll, gleichwie ein Knecht seinen Herrn aufweckt im Schlaf oder sonst ermahnt seines Amtes“. Freilich sollen die Prediger, wiewohl sie das höchste Amt in der Christenheit innehaben, ihrerseits in herzlicher Demuth bereit sein, allezeit Erinnerung und Ermahnung von den „Regierern“ anzunehmen. Wir setzen eine längere, köstliche Ausführung Luthers hierher.

Luther schreibt in der Kirchenpostille zu den Worten Röm. 12, 8.: „Regieret jemand, so sei er sorgfältig“, unter Anderm Folgendes: „Wie verkehret aber St. Paulus also die Ordnung? daß er das Regieren nicht oben und vornan setzt, sondern läßt die Weissagung vorgehen; darnach, dienen, lehren, ermahnen, geben; und setzt das Regieren am allerletzten unter den gemeinen Ämtern, nämlich, am sechsten Ort. Es hat der Geist ohne Zweifel gethan um des zukünftigen Greuels willen, daß der Teufel in der Christenheit würde eine lautere Tyrannei und weltliche Gewalt anrichten; wie es denn jetzt geht, daß Regieren das Oberste ist, und muß sich alles, was in der Christenheit ist, nach der Tyrannei und ihrem Muthwillen lenken, und eher alle Weissagung, Dienst, Lehre, Ermahnen und Geben

*) Synodalhandbuch, S. 7.

untergehen, ehe dieser Tyrannei Abbruch gelitten würde, daß sie sich lenken ließe nach der Weissagung, Lehre und andern Aemtern. Wir aber sollen wissen, daß nichts höher ist, denn Gottes Wort, welches Amt über alle Aemter ist; darum ist das Regieramt sein Knecht, der es anregen und wecken soll, gleichwie ein Knecht seinen Herrn aufweckt im Schlaf, oder sonst ermahnt seines Amtes; auf daß bestehe, das Christus sagt Luc. 22, 26.: „Wer der Größeste will unter euch sein, der soll euer Diener sein; und die Ersten sollen die Letzten sein.“ Wiederum sollen die Lehrer und Weissager dem Regierer gehorchen sein und folgen, und sich auch herunter lassen, auf daß also alle christliche Werke und Amt eines andern Dieners seien; damit auch bleibe, das in dieser Epistel St. Paulus lehrt, daß niemand sich der Beste dünke, und vor den andern sich erhebe, und mehr von sich halte, denn zu halten sei; sondern lassen ein Amt und Gabe wohl edler sein denn die andern, aber doch ein jeglicher dem andern damit diene und unterthänig sei; also ist das Regieramt das geringste, und ihm sind doch die andern alle unterthan, und dienen wiederum allen andern mit seinem Sorgen und Aufsehen. Wiederum ist Weisheit das höchste, und folgt doch dem Regierer.“*)

Aber — so wirft man ferner ein —, wie kommt, wenn es in der Kirche keine Herrschaft eines Menschen über den andern gibt, die besondere Regiergabe zur Geltung? Christus gibt doch in seiner Kirche unter andern Gaben auch die besondere Gabe des Regierens. Unter den mancherlei Gaben, mit denen Christus seine Kirche ausrüstet, nennt die Schrift ausdrücklich auch die Gabe des Regierens, Röm. 12, 6. 8. 1 Cor. 12, 28. Allerdings. Aber wie keine der vielen Gaben in der Kirche eine Herrschaft begründet, so auch nicht die Gabe des Regierens. Einzelne Personen in der Kirche haben vor Andern z. B. die Gabe des Lehrens. Sie können genauer und klarer als Andere darlegen, was rechte und was falsche Lehre sei. Aber damit ist ihnen für ihre Person nicht die geringste Herrschaft in der Kirche eingeräumt. Die besondere Gabe des Lehrens hat sich gerade darin zu bethätigen, daß die vorgetragene Lehre nicht als eigene Lehre erscheine, sondern als die Lehre des Wortes Gottes erkannt werde. Einzelne Personen in der Kirche haben vor Andern die Gabe der Schriftauslegung. Sie verstehen es besser als Andere, den Sinn der Schrift ins Licht zu stellen. Aber damit ist ihnen wiederum keinerlei Herrschaft in der Kirche eingeräumt. Die besondere Gabe der Schriftauslegung hat sich gerade darin zu bethätigen, daß die vorgetragene Auslegung nicht als eigene Auslegung aufträte, sondern als die von der Heiligen Schrift selbst gegebene Auslegung erkannt werde. So verhält es sich auch mit der Gabe des Regierens. Freilich verstehen einzelne Personen in der Kirche es vor Andern, vorliegende Verhältnisse recht zu beurtheilen und zu regeln. Sie haben eine besondere Regiergabe. Aber wie hat sich

*) St. Louiser Ausgabe XII, S. 339.

diese Regiergabe zu bethätigen? So, daß sie sich ganz in den Dienst des Wortes Gottes stellt, daß sie dazu verwendet wird, die Gemeinde Gottes mit Gottes Wort zu regieren. Die mit der Regiergabe Ausgerüsteten haben ihre Gabe dahin zu richten, daß alle Dinge, die durch Gottes Wort entschieden sind, nun auch nach dem klaren Worte Gottes entschieden werden, und daß alle Dinge, die in Gottes Wort freigelassen sind, der christlichen Freiheit anheimgegeben und auf dem Wege des christlichen Uebereinkommens geordnet werden. Es ist schon früher daran erinnert worden, daß die christliche Gemeinde, wenn sie, dem Predigtamt zur Hülfe, das sogenannte Vorsteher- oder Ältestenamnt, aufrichtet, diesem Amt ja keine Herrschergewalt einräume. Es ist ein ganz schändlicher Mißbrauch der Gabe Gottes, wenn jemand sie dazu verwendet, nach seinem eigenen Kopfe die Gemeinde Gottes zu regieren. Luther ermahnt die Pastoren, immerfort die Heilige Schrift und sonderlich die sogenannten Pastoralbriefe fleißig zu studiren, damit sie im Stande seien, die Christen aus Gottes Wort zu regieren, und „nicht Noth sei, aus eigenem Menschen dunkel die Christen zu regieren.“*) Das greulichste Exempel solcher Mißregierung in der Kirche — nämlich der Regierung der Christen „aus eigenem Menschen dunkel“ — haben wir im Papstthum. Aber jeder Pastor, ja, jeder Christ, hat Ursache, sich vor diesem Greuel warnen zu lassen, daß er nicht, weil er natürliches Talent zum Regieren hat, nach seinem Kopf in der Kirche regiere, und sich so eine Herrschaft in der Kirche anmaße. Luther sagt in Bezug auf diesen Punkt im Anschluß an die Aufzählung der Aemter und Gaben in der Kirche Eph. 4, 11.: „Das sind die unterschiedenen Aemter, und müssen derhalben auch die Gaben unterschieden sein. Aber um solcher unterschiedenen Gaben und Aemter willen soll Niemand sich weltliche Gewalt zumessen, noch weltlicher Weise regieren wollen. Alle mit einander sind sie gebunden an das Evangelium, daß sie bei demselben bleiben, und wider dasselbe nichts anrichten sollen. Solches ist die rechte Ordnung, die in der Kirche gehen und bleiben soll; und ist weit eine bessere Ordnung, denn des Papsts, der eine Ordnung nicht der Aemter, sondern der äußerlichen Gewalt halben macht, wider den Befehl Christi.“**)

Hier nun noch einige Worte über die zu befürchtende Unordnung, wenn in der Kirche kein Christ dem andern etwas zu gebieten und auch die Synode keine gesetzgeberische Gewalt habe. Die menschliche Vernunft meint, es müsse Einem oder Mehreren in der Kirche die Macht zugestanden werden, über Gottes Wort hinaus zu gebieten. Sonst folge Confusion. Auch Luther hat sich schon mit diesem Einwurf beschäftigt. Er schreibt: „Nun möchte aber Jemand fragen und sagen: Was doch das für ein Regiment sei, und wie es bestehen könne, da kein Haupt ist, und die, so im Amt sind, alle gleich, und keiner mehr Gewalt noch Macht denn der andere haben soll?

*) Vorrede zum 1. Brief an Timotheus.

**) St. Louiser Ausg. XIII, 1241.

Denn die Vernunft achtet solche Gleichheit für eine Unform und schädliches Ding. Wiederum, wo ein Haupt ist, auf welches Andere sehen und sich nach demselben richten mögen, solche Ordnung hält die Vernunft für nützlich und gut und schließt daraus: So es in der Kirche soll recht zugehen, so muß es auch also sein, oder es werde eine lautere Confusion und Unordnung sein.“ „Und dies ist die Ursache“, setzt Luther hinzu, „die noch viel vernünftige, weise Leute gefangen hält.“ Er berichtet, daß es zu seiner Zeit Leute gab, die zwar das Regiment des Papstes nicht wollten, weil es „eine öffentliche unwidersprechliche Aergerniß“ sei, aber gleichwohl eine Ordnung in der Kirche für nothwendig hielten, „wie im weltlichen Regiment, da (unter den Dienern der Kirche) einer höher ist, mehr Befehls und größere Gewalt hat, denn der andere“, um — nun, um Unordnung zu verhüten. So stehen auch heute noch „viel vernünftige und weise Leute“. Die Secten und die romanisirenden Lutheraner operiren noch heute mit denselben Gründen. Aber hören wir Luther in Bezug auf diesen Einwurf. Er sagt: „Wahr ist es, die Vernunft hält es für eine Unform und schädlichen Irrthum, daß alle, so in Kirchenämtern sind, sollen gleich sein, und einer so viel Befehl, Macht und Gewalt haben, als der andere. . . . Aber hier haben wir einen ausgedrückten Befehl unsers lieben Herrn Christi, der will, daß es in seinem Reich, welches ein geistliches Reich ist, anders soll zugehen, denn im weltlichen Reich: auf daß jedermann lerne, wie im Reich Christi nicht menschliche Gewalt oder großes Ansehen, sondern allein das Wort Gottes gelten und regieren soll.“*) Daß Christen sich wirklich unter Gottes Wort beugen, haben wir schon früher gesehen.

Blicken wir auf uns selbst. Unsere Synode hat nun eine 50jährige Erfahrung mit einem Kirchenregiment allein durch Gottes Wort hinter sich. Die „lautere Confusion“ und „Unordnung“, welche alle Welt bei dieser Art Regiment fürchtet, ist bei uns nicht eingetreten. Man hat sie uns zwar auch prophezeit, diesseits und jenseits des Oceans. Man nannte den Satz, daß die Synoden den Gemeinden gegenüber nur „berathende“, nicht gesetzgebende Gewalt haben, das „eigentliche Herz der Anarchie“. Die Kirche, welche sich nicht eines Kirchenregiments mit gesetzgeberischer Gewalt erfreue, sei wie ein „Pflänzlein ohne stützenden Pfahl“. Die Verwirrung werde bei unserer Verfassung bald überhand nehmen. Nichts von alledem ist eingetreten. Wir haben in unserer Synode, auch was die äußere Ordnung anlangt, wohl die ruhigste Zeit verlebt, deren sich die Kirche je erfreut hat. Wir müssen sagen: Die Regierung der Kirche allein mit Gottes Wort hat sich bei uns in 50jähriger Praxis bewährt. Freilich, das Fleisch der Christen hat sich auch bei uns geltend gemacht. Es hat sich nicht immer sofort dem Worte Gottes untergeben. Hin und wieder waren lange Verhandlungen, viel Belehrung und anhaltende Ermahnung nöthig. Aber Gottes Wort hat die Oberhand behalten. Auch in scheinbar hoffnungs-

*) St. Louiser Ausg. XIII, 1240.

losen Fällen hat es seine regierende, alles beherrschende Macht offenbart. So fest hat uns das Regiment allein des Wortes Gottes verbunden und zusammengehalten, daß uns Fernerstehende meinten und meinen, wir hätten ein hochkirchliches Regiment. Noch kürzlich schrieb ein englisches Blatt, die Missourier seien die High Church Party in der lutherischen Kirche.

Ich wiederhole es noch einmal: die Regierung der Kirche allein mit Gottes Wort und die Freilassung alles dessen, was nicht in Gottes Wort geboten ist, hat sich bei uns bewährt. Wir haben es in unserm Synodal-leben erfahren, daß die Kirche Gottes am besten fährt, wenn sie bei Gottes Ordnung bleibt. Möge es nie anders werden!

Es bedarf auch in diesem Punkt der geistlichen Wachsamkeit. Daß das falsche Kirchenregiment so allgemein ist in der Kirche, weist auf einen in allen Christen sich noch findenden Boden für diese Verkehrung der Ordnung Gottes hin. Das ist das böse Fleisch. Das böse Fleisch, welches sich auch noch in uns allen findet. Nach dem Fleische will der Eine höher sein als der Andere und nicht ein bloßer Diener, der seinem Bruder oder seinen Brüdern mit Gottes Wort dient. Nach dem bösen Fleische will der Christ mit seinen Gaben nicht bloß dem Worte dienen, sondern seine Gaben zur Herrschaft mißbrauchen. Da gilt es Wachens und Betens! Ferner: Das Fleisch auch der Christen erkennt nicht die Herrlichkeit der Lehre von der Rechtfertigung und somit auch nicht die Freiheit eines Christenmenschen. Es erkennt nicht die geistliche Natur der Kirche Christi, sondern will sie immer mit den Reichen dieser Welt verwechseln. Es glaubt nicht an die Kraft des Wortes Gottes, sondern hält es für ein schwaches Ding. Sofern man dem Fleische Gehör gibt, sieht man sich nach einem stärkeren Regiment um; nach einem Regiment, dessen Arm man dadurch stärken will, daß man ihm eine über Gottes Wort hinausgehende Gewalt zuschreibt.

Es ist hier wie bei der Lehre von der Rechtfertigung. Alle geistlich Blinden meinen, es werde dem Leben in der Sünde Thür und Thor geöffnet, wenn die Rechtfertigung und Erlangung der Seligkeit aus Gnaden um Christi willen durch den Glauben ohne Werke gelehrt werde. Daher die Versuche auf der ganzen Linie der irrgläubigen Gemeinschaften, — von der Pabstsecte an durch alle Secten hindurch bis auf die synergistischen Lutheraner — Menschenwerke in dem Artikel von der Rechtfertigung und Erlangung der Seligkeit einzumengen. Nur so werde es mit dem christlichen Leben vom Flecke gehen. So auch beim Kirchenregiment. Alle, welche dem Fleische nach urtheilen, meinen, Gottes Wort allein genüge nicht zur Regierung der Kirche. Sollen die Kirche nicht durch Unordnung in Verfall gerathen, so müsse man Behörden mit gesetzgeberischer Gewalt schaffen. Daher die ganze lange Reihe von falschen Kirchenregimenten vom Pabstthum an bis zu den americanischen, mit gesetzgeberischer Gewalt ausgestatteten Synoden. Aber das ist, wie gesagt, das Urtheil der blinden menschlichen Vernunft. St. Paulus sagt in Bezug auf das Verhältniß von

Heiligung und Rechtfertigung: „Die Sünde wird nicht herrschen können über euch, sintemal ihr nicht unter dem Gesetz, sondern unter der Gnade seid“, Röm. 6, 14. Dem analog ist in Bezug auf das Kirchenregiment zu sagen: die Kirche wird nicht in Unordnung gerathen, sondern wohl regiert werden, wenn sie nicht mit Menschenfakungen, sondern allein mit dem Wort ihres Meisters regiert wird.

Bleiben wir durch Gottes Gnade bei dieser Regierungsweise. Jede Versuchung, davon abzuweichen, ist als eine Versuchung des Teufels zu erkennen und abzuweisen. Der Teufel narret die Kirche, wenn er ihr einredet, sie müsse in ihrer Mitte eine über Gottes Wort hinausgehende Gewalt und Obrigkeit haben. Die Kirche wird von dem Augenblick an schwach, wo sie anfängt, sich nach menschlichen Stützen umzusehen, in der Meinung, Gottes Wort reiche als regierende und stützende Macht nicht aus. Dadurch hält sie Fleisch für ihren Arm und weicht mit ihrem Herzen von ihrem einigen Herrn. Ja, wir müssen sagen: die Kirche gibt sich als Kirche auf und nimmt die Art weltlicher Reiche an, sobald sie sich nicht an Gottes Wort als Regiermittel genügen läßt.

Wie herrlich dagegen ist das Kirchenregiment, das allein mit Gottes Wort ausgeübt wird! Wie kann man Worte genug finden, die Herrlichkeit dieses Kirchenregiments würdig zu preisen! Christi Ehre bleibt dabei unangetastet; er bleibt — wie es sein soll — der einzige Meister. Der Christen Herrlichkeit bleibt unangetastet. Sie genießen ihr hohes, theuer erworbenes Privilegium, ohne Vermittelung der Menschen unter ihres Heilandes Herrschaft und Regierung zu stehen. Alle Gaben, die Christus seiner Kirche verleiht, kommen zur rechten Verwendung; sie dienen nur der Verherrlichung Christi, nicht zur Selbstverherrlichung.

Und die Kirche ist stark unter diesem Regiment, wie schwach sie vor Menschaugen erscheinen mag. Was durch Gottes Wort zusammengeführt und zusammengehalten wird, das kann keine Macht der Welt, auch nicht die Todesfurcht, nicht einmal der Tod selbst auseinander treiben. Daß wir, als kirchliche Gemeinschaft, dieses wunderbaren, unaussprechlich herrlichen Regiments uns erfreuen, ist eine so große Gnade, daß wir darob Gott täglich loben und preisen sollten. Wie eifrig sollten wir sein, das Reich, in welchem Christus allein durch sein Wort regiert, weiter auszubreiten! Wie willig sollten wir sein, alle Gaben und Güter in den Dienst dieses Reiches zu stellen! Wie leicht sollten wir alle persönlichen Kränkungen, die im gegenseitigen Verkehr etwa mit unterlaufen, vergessen können, die wir mit einander als Brüder unter einem so herrlichen Regiment stehen!

O, Gott öffne uns die Augen für die Herrlichkeit des Kirchenregiments allein durch Christi Wort! Unter diesem Regiment wollen wir durch seine Gnade bleiben, bis unsere Augen den schauen, der uns hier mit seinem Wort geleitet hat. Amen.

Geschäftsverhandlungen.

Concordia-Seminar zu St. Louis, Mo.

„Indem die Aufsichtsbehörde des Concordia-Seminars zu St. Louis der Ehrw. Synode ihren schuldigen Bericht über die Jahre 1893 bis 1896 erstattet, hat sie, wie in ihrem letzten Bericht von 1893, zuerst die traurige Pflicht, abermals eines schmerzlichen Todesfalles in der Facultät der Anstalt zu gedenken. Damals war es der Tod des seligen Prof. Rudolf Lange, diesmal der Tod des ältesten Gliedes derselben, Prof. Martin Günther. Kaum vier Wochen nach der letzten Versammlung der Ehrw. Delegatensynode, welcher derselbe noch in voller Gesundheit und Geisteskraft beigewohnt hatte, gefiel es dem Herrn über Leben und Tod, diesen seinen treuen Knecht durch einen plötzlichen Tod aus seiner streitenden Kirche in die triumphirende zu versetzen. Er hatte noch am Pfingstmontag-Vormittag mit großer Freudigkeit gepredigt, als er noch in der Sacristei von einem heftigen Unwohlsein befallen wurde und bereits nach einigen Stunden einem Herzschlag erlag. Zwanzig Jahre hatte er der Kirche an unserer Anstalt mit ebenso hingebender Treue als reichen Geistesgaben zu großem Segen gedient und ist sein so unerwarteter Tod im Alter von nur 63 Jahren für die Anstalt und unsere Synode ein überaus schwerer und schmerzlicher Verlust. Mit tiefer Beugung und unter allgemeiner Theilnahme unserer lutherischen Christen in St. Louis haben wir seine entseelte, theure Leibesuhle am 25. Mai zu Grabe geleitet. Sein Name wird in theurem und segensreichem Andenken bleiben, so lange unsere Anstalt und die Synode bei dem reinen Gotteswort verharret, das seines Lebens und Wirkens einige Sonne gewesen ist. Sei es uns hierbei noch gestattet, mitzutheilen, daß die treue Gattin des Entschlafenen im December des letzten Jahres nach vieljährigem schweren Leiden durch einen seligen Tod ihrem Gatten in die Freude des ewigen Lebens nachgefolgt ist. Während ihres kurzen Wittwenstandes hat ihr die Aufsichtsbehörde die von der Ehrw. Synode bestimmte Pension zukommen lassen.

„In Bezug auf die schwere und langwierige Krankheit des Präses unserer Anstalt, des theuren Prof. F. Pieper, theilen wir mit innigem Lob und Dank Gottes mit, daß derselbe schon seit letztem Herbst seine Vorlesungen wieder aufgenommen hat und die völlige Herstellung seiner Gesundheit mit Zuversicht zu erwarten steht. Es hat oft geschienen, als wolle Gott unsere Anstalt auch seiner hohen und reichen Gaben berauben. Aber er hat in Gnaden die Gebete seiner Gläubigen erhört und die drohend erhobene Zuchttruhe nach seiner großen Barmherzigkeit wieder niedergelegt, so daß dieser theure Mann heute in unserer Mitte verweilen und an den Be-

figuriren. — Es gehört dies zu einer einheitlichen und übersichtlichen Führung des Geschäfts.

Beschlossen, daß das Directorium mit solchen bösen Schuldnern, welche einer oftmaligen Mahnung, doch die von ihnen gemachten Schulden endlich einmal zu bezahlen, kein Gehör geben, verfahren soll wie mit nicht zahlenden Geschäftsleuten, nämlich ihnen den Credit entziehen, und zwar auf so lange, bis sie ihre Rückstände bezahlt haben.

Beschlossen, daß das Directorium angewiesen werde, eine Aufforderung an alle diejenigen ergehen zu lassen, in deren Besitz sich noch von früheren Zeiten her Actien oder vom Verlag ausgestellte Noten befinden, solche Actien oder Noten sofort zur Einlösung einzusenden. Es sollte unser Verlag auch in dieser Beziehung schuldenfrei erscheinen.

Beschlossen, daß der Allgemeine Kassirer angewiesen werde, nur dann für Bauten Gelder auszugeben, wenn die Synode den betreffenden Bau beschlossen hat, oder, falls dies nicht zuvor geschehen konnte, wenn der Allgemeine Präses ihn (den Allgemeinen Kassirer) davon benachrichtigt hat, daß er im Einverständniß mit der betreffenden Aufsichtsbehörde seine Zustimmung zur Contrahirung der Schuld für die zu errichtenden Bauten gegeben habe.

Beschlossen, daß der Allgemeine Kassirer ermächtigt werde, die Gelder, welche einst vom Westlichen District ausgeliehen worden, aber in die Allgemeine Kasse zurückgezahlt worden sind, an den genannten District, als den Eigenthümer dieses Geldes, auszuliefern.

Beschlossen, daß dem Bittgesuche der Gemeinde zu Denver, Colorado, entsprochen und ihr unter Sicherstellung mit ihrem Eigenthum ein zinsfreies Darlehen von \$2500.00 durch den Allgemeinen Kassirer überandt werde.

Katechismus der Synode.

Gemäß einer schon im Jahre 1890 getroffenen Anordnung der Synode sollte der vom Allgemeinen Präses, Herrn Dr. H. C. Schwan, im Auftrag der Synode angefertigte Katechismusentwurf, noch ehe derselbe der Synode selbst unterbreitet würde, einer von letzterer eingesetzten Revisionscommission zur Durchsicht in die Hände gelegt werden, nachdem der Entwurf zuvor im „Schulblatt“ veröffentlicht worden wäre, behufs Prüfung desselben und Einsendung etwaig zu machender Ausstellungen an den Verfasser zwecks Prüfung, resp. Verwerthung derselben. Das alles war geschehen, und Herr Professor Gräbner, ein Glied der von der Synode ernannten Revisionscommission bezüglich des Katechismusentwurfes, erstattete nun hierüber der Synode Bericht. Die Commission bezeugte, daß sie nach Beendigung ihrer Arbeit den Katechismusentwurf zum Probedruck behufs Darreichung desselben an die Synodalen zur nochmaligen Prüfung mit großer Freude über-

gebe, und sprach die Hoffnung aus, daß dieser neue Katechismus der Synode einem längst empfundenen Bedürfniß abhelfen und den Gemeinden zum reichen Segen dienen werde. Nun könne ein jeder Lehrer an der Hand dieses Katechismus sämtliche Heilslehren in dem Zeitraum eines Jahres bequem in die Herzen der Kinder senken, und der Pastor sei nicht mehr genöthigt, im Confirmandenunterricht so viele Fragen beiseite liegen zu lassen. Doch solle hiermit nicht gesagt sein, daß eine jede Gemeinde diesen Katechismus einführen müsse; sie kann es thun oder unterlassen. Es genüge der Synode, erklären zu können, daß mit diesem Büchlein die reine, lautere Lehre des göttlichen Wortes in einer Form geboten werde, die sich nach ihrer Uebersetzung sehr heilsam erweisen werde.

Beschlossen — und zwar einstimmig —, daß die Synode den von Herrn Dr. H. C. Schwan entworfenen und ausgearbeiteten Katechismus als ihren eigenen — also als den Katechismus der Synode — annehme und ihn als solchen den Gemeinden empfehle.

Incorporation der Synode.

Dieselbe ist den Anordnungen der Synode gemäß vollzogen worden. Die Urkunde lautet wie folgt:

STATE OF MISSOURI, }
DEPARTMENT OF STATE. }

I, ALEXANDER A. LESUEUR, Secretary of State of the State of Missouri, hereby certify that the annexed pages contain a full, true and complete copy of the articles of association or agreement, in writing, of the *German Evangelical Lutheran Synod of Missouri, Ohio and other States*, with the several certificates thereon, filed July 13th, 1894, as the same appears on file, as the law directs, in this office.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix the Great Seal of the State of Missouri. Done at office, in the City of Jefferson, this 13th day of July A. D. 1894.

(SEAL.)

A. A. LESUEUR,

Secretary of State.

Articles of Association.

Whereas a voluntary organization has existed since 1847 of the “German Evangelical Lutheran Synod of Missouri, Ohio and other States,” acknowledging as a true exhibition of sound christian doctrine the book of Concord of the year of our Lord 1580, and which

association has been enabled to extend its labors throughout many States of this Union and elsewhere, and has caused several corporations to be organized and created for the purpose of building and conducting Colleges, Seminaries and other institutions of learning in order thereby to aid in the disseminating of a knowledge of the word of God and in the educating of ministers and teachers to labor in the Lutheran Church, and

Whereas, it is desirable that the parent body should also be incorporated with the view to fully carrying out the original objects of its creation and the more readily to continue and perpetuate its labors,

Now Therefore, these articles of association are adopted and submitted as a basis of its incorporation, to-wit:

ARTICLE I. — NAME.

The name of this corporation shall be the "GERMAN EVANGELICAL LUTHERAN SYNOD OF MISSOURI, OHIO AND OTHER STATES," and an office of the same shall be located in the City of St. Louis, in the State of Missouri.

ARTICLE II. — MEMBERSHIP AND OBJECTS.

The object of this association shall be to unite in a corporate body the members of the German Evangelical Lutheran Church who remain true to and acknowledge as a true exhibition of sound christian doctrine the book of Concord of the year of our Lord Fifteen Hundred and eighty; to receive, acquire, hold, manage and control the real and personal property and franchises which may hereafter be acquired by this corporation and such as have heretofore been obtained and are now held by different educational corporations, under its direction and for its advancement, and to continue and perpetuate the good work of disseminating the Gospel throughout the world.

ARTICLE III. — MEMBERSHIP.

The power of this corporation shall be lodged with the accredited clerical and lay delegates of the congregations in actual membership with this synod, not less than two and not more than seven congregations being entitled to one clerical and one lay representative in this organization at the option of said congregations, and only such delegates shall be entitled to a vote at the meetings of this Synod.

ARTICLE IV. — MEETINGS.

This corporation shall have a general Synodal meeting once in three years and as many special meetings as may be called by its president. The time and place of the first meeting of this corpora-

tion shall be in the year 1896 on Wednesday, April 29th, in Fort Wayne, Indiana, and regular meetings thereafter shall be held at such time and place, in or out of the State of Missouri, as may be determined by the corporation at its regular meetings.

ARTICLE V. — OFFICERS.

The officers of this Association shall consist of a President, two Vice Presidents, (one for the eastern and the other for the western part of the Synod,) a Secretary and a Treasurer; the latter only may be elected from among the lay members of the Synod. Elections of officers shall take place at its general meetings and be for a term of three years and until their successors are duly elected, and such officers shall constitute a Board of Directors of the corporation.

ARTICLE VI. — PROPERTY.

This corporation shall be fully authorized to acquire and hold, by gift, grant, demise, devise or otherwise, any franchises, lands, tenements, hereditaments, moneys, rents, goods and chattels, of whatsoever kind the same may be, which are, or hereafter may be, given, granted, devised, demised to or purchased by it for its use, and particularly to acquire by direct conveyance or by declarations in trust, as may best suit the interests of this corporation, all rights, franchises and privileges of every kind and description and all real and personal property, which are now or may hereafter be held by the corporation known as and styled the "Trustees of the Concordia College," a corporation organized and incorporated by an act of the General Assembly of the State of Missouri, entitled "An act to incorporate the 'Concordia College' of the German Evangelical Lutheran Synod of Missouri, Ohio and other States," approved February 23d 1853; also by the corporation organized and incorporated under the name and style of the "German Theological Seminary of the German Evangelical Lutheran Synod of Missouri, Ohio and other States," duly incorporated under an act of the General Assembly of the State of Indiana, approved January 21st 1850 and under an amendatory act of said General Assembly of the State of Indiana, approved April 5th 1881; also by the corporation entitled the "Trustees of the Evangelical Lutheran Teachers' Seminary," incorporated under the laws of the State of Illinois by an act entitled "An act to incorporate the Evangelical Lutheran Teachers' Seminary of the German Evangelical Lutheran Synod of Missouri, Ohio and other States," approved February 16th 1865, and under an act amendatory thereof approved February 21st 1867, and by a corporation organized May 10th 1886 under the name and style of "Concor-

dia College" under the general incorporation laws of the State of Wisconsin and placed by the articles of association thereof under the supervision and control of the German Evangelical Lutheran Synod of Missouri, Ohio and other States.

ARTICLE VII. — BY-LAWS.

This association shall have and make such by-laws as may appear necessary to accomplish the purpose of its creation and shall create such committees and other subordinate bodies as may seem desirable for the attainment of its general and special objects.

ARTICLE VIII. — AMENDMENTS.

Amendments of these Articles of Association may be made at any time at a regular synodal meeting of this corporation providing the same be not inconsistent with the constitution or the laws of the United States or of the State of Missouri and a majority of the voting members present at such meeting have voted therefor, and such amendments thereafter be first submitted to and approved by the Circuit Court of the City of St. Louis.

IN THE CIRCUIT COURT, CITY OF ST. LOUIS, STATE OF MISSOURI.

June Term, 1894. Monday, July 2d, 1894.

IN THE MATTER OF
the (1290)
GERMAN EVANGELICAL LUTHERAN SYNOD
OF MISSOURI, OHIO AND OTHER STATES.

And now on this day come H. C. Schwan, as President, August Rohrlack, as Secretary, and E. F. W. Meier, as Treasurer, of the "GERMAN EVANGELICAL LUTHERAN SYNOD OF MISSOURI, OHIO AND OTHER STATES," and submit to the Court the Articles of Agreement of said Association, together with a petition praying for a pro forma decree thereon, in manner provided by law, and it appearing to the Court that said petition has remained on file in the Clerk's office of this Court for at least three days since the same was first presented to the Court, and the Court having duly examined said articles of Agreement, and being duly advised in the premises, doth now consider, adjudge and determine that such articles of Agreement and the purposes of the Association as therein expressed, come properly within the purview of Article X of Chapter 42 of the Revised Statutes of the State of Missouri, 1889, entitled "Benevolent, Religious,

Scientific, Fraternal — Beneficial, Educational, and Miscellaneous Associations," and are not inconsistent with the Constitution or laws of the United States or of the State of Missouri.

STATE OF MISSOURI, }
CITY OF ST. LOUIS. } ss.

I, Philip H. Zepp, Clerk of the Circuit Court, City of St. Louis, State aforesaid, certify the above to be a true copy of the order made in the matter aforesaid, as fully as the same remains of record in my office.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix the seal of said Court at office in the City of St. Louis, this 3d day of July, A. D. 1894.

(SEAL.)

PHILIP H. ZEPP,
Clerk Circuit Court.

STATE OF MISSOURI, }
CITY OF ST. LOUIS. } ss.

I, the undersigned, Recorder of Deeds for said City and State, do hereby certify that the foregoing and annexed instrument of writing was filed for record in my office on the eleventh day of July, A. D. 1894, at 3:21 o'clock P. M., and is truly recorded in Book Corp. 14, page 88.

WITNESS my hand and official seal on the day and year aforesaid.

(SEAL.)

WM. A. HOBBS, Recorder.

Filed and copy issued Jul. 13, 1894. A. A. LESUEUR,
Secretary of State.

Bezüglich vorstehender Incorporationsurkunde gab der Allgemeine Vicepräsident, Herr Pastor C. Groß, in Erledigung seines ihm von der Synode gewordenen Auftrags — siehe Bericht vom Jahre 1893, S. 127 — folgende Erklärung: „Diese Incorporation, welche im Staate Missouri vollzogen worden ist, macht die Synode zu einer gesetzlich anerkannten Körperschaft in allen Staaten, jedoch unter verschiedenen Bedingungen, entweder ohne Weiteres, oder erst dann, wenn eine beglaubigte Abschrift bei dem Staatssekretär eingereicht und von diesem in die Staatsbücher eingetragen (recorded) worden ist. Die Gesetze der Einzelstaaten sind in diesem Punkte verschieden. Die Synode besitzt Anstalten in den Staaten Missouri, Illinois, Indiana, Wisconsin, Minnesota und New York. Ich habe an alle Aufsichtsbehörden, resp. Commissionen, geschrieben und sie gebeten, dafür Sorge zu tragen, daß die Synode in allen diesen Staaten, je nach ihren Gesetzen, als 'legal body' (gesetzliche Körperschaft) anerkannt werde. Im Staate Missouri, in welchem die Incorporation vollzogen wor-

den ist, hat die Synode selbstverständlich gesetzliche Anerkennung; im Staate Illinois ebenso, wie ein längeres Gutachten eines Richters in Chicago klarstellt; desgleichen im Staate Indiana, wie ein mündlich eingeholtes Gutachten eines Richters bezeugt; von St. Paul, Minn., lief der Bericht ein, daß auch im Staate Minnesota keine Incorporation nöthig sei, daß aber die Trustees, deren Namen in der Incorporationsurkunde verzeichnet stehen, einen Agenten für Minnesota ernennen sollten, und daß diese Ernennung in beglaubigter Abschrift bei dem Staatssecretär eingereicht werden müsse."

Beschlossen, daß die Synode sich zu dem Inhalt der Incorporationsurkunde bekennt und dieselbe ihrem Wortlaute nach als ihre eigene annimmt.

Da der Synode mitgetheilt wurde, daß auch der Staat New York befriedigt sei, wenn eine beglaubigte Abschrift der Urkunde an den Staatssecretär eingesandt werde behufs Eintragung in das betreffende Staatsbuch, so wurde beschlossen, daß der Allgemeine Kassirer, Herr Meier in St. Louis, von der Synode hiermit den Auftrag erhalte, eine wortgetreue und beglaubigte Copie der Urkunde dem Staatssecretär von New York zu übersenden.

Legatverwaltung, resp. Trustees at large.

„Ueber die den Trustees aufgetragene Verwaltung und Ueberwachung vorhandener Vermächtnisse haben wir Folgendes zu melden:

„1. Das Raithelsche Vermächtniß, bestehend in Farmland in Lawrence Co., Mo., ist in bisheriger Weise durch Verpachtung nutzbar gemacht und der Ertrag \$443.70 vom Jahre 1893, \$409.63 vom Jahre 1894 und \$357.39 vom Jahre 1895 ist durch den Kassirer an Herrn P. C. Groß in Fort Wayne (Unterstützungskasse) abgeliefert worden.

„2. Ein Vermächtniß, bestehend in zwei Noten von je \$1000.00 der Doris Landre, mit der Bestimmung, daß der Ertrag dieser \$2000.00 zur Unterstützung armer Studirender zunächst aus der Johannes-Gemeinde bei Bingen, Ind., angewendet werde, ist der Bestimmung der Erblasserin gemäß verwaltet, und die Erträge sind an Herrn P. C. F. W. Hüge abgegeben worden, nämlich unter dem 23. April 1894 \$50.00, unter dem 26. December 1894 \$50.00 und unter dem 16. Januar 1896 \$50.00.

„3. Zwei Legate, das Schwegelsche von \$200.00 und das Hechtsche von \$850.00, sind ihrer Bestimmung gemäß dem derzeitigen Verwalter der Kasse für arme Studenten in St. Louis übermittelt worden.

„4. Zwei weitere Stiftungen, nämlich das Seyffarth'sche Vermächtniß im Betrag von \$1000.00 und die Walther-Stiftung im Betrag von \$858.39, sind von der Aufsichtsbehörde zu St. Louis ebenfalls ihrer Bestimmung gemäß verwaltet worden.

„5. Zwei Legate, deren Verwalter der Allgemeine Kassirer ist, nämlich das Legat von J. Werner im Betrage von \$115.72 und das von C. Hengerer im Betrag von \$122.11, sind dem Allgemeinen Legatfonds für das Seminar in St. Louis einverleibt worden; jedoch wird der Betrag zur Unterstützung armer Studenten verwandt.

„6. Das Stark'sche Legat von \$6000.00 ist theils an die Verwalter der in der Synode bestehenden Waisenhäuser, theils an die Kassen für Innere Mission durch den Allgemeinen Kassirer vertheilt worden.

„7. Ein Legat von G. Frik im Betrag von \$249.00 zum Besten der Inneren Mission hat der Allgemeine Kassirer ebenfalls an die Missionskassen verabsolgt.

„8. Die Verwaltung der übrigen Stiftungen haben wir in den Händen derjenigen Personen oder Behörden belassen, welche mit derselben laut Seite 130 und 131 des Berichtes der vorigen Delegatensynode betraut waren.

„Der Beschluß der Allgemeinen Synode (Bericht von 1893, Seite 131), daß das Eigenthumsrecht auf allen vorhandenen Stiftungen, welche einer solchen Uebertragung fähig sind, an die Allgemeine Synode übertragen werde, ist noch nicht zur Ausführung gekommen." (Auszug aus dem Bericht der Trustees betreffs ihrer Legatverwaltung.)

Beschlossen, daß die Herren W. Schütz, H. Schenkel und C. F. W. Meier als Trustees at large wiedererwählt werden, und zwar nur zu dem Zweck und mit dem Auftrag, daß sie dasjenige Eigenthum der Synode, welches von den früheren Eigenthümern auf sie als Trustees der Synode übermacht worden ist, in rechtsgültiger Form auf die Allgemeine Synode übertragen.

Beschlossen, daß, nachdem die Trustees at large diesen ihren Auftrag in abschließender Weise ausgeführt, die darauf bezüglichen Documente an das Präsidium der Allgemeinen Synode abgeliefert und von demselben eine Bescheinigung über den Empfang und die Richtigkeit besagter Documente erhalten haben, das Amt der Trustees at large erloschen sei.

Beschlossen, daß zur Verwaltung aller Legate, welche der Synode als solcher vermacht sind oder noch vermacht werden mögen und über deren Verwaltung nicht anderweitige Bestimmungen getroffen sind oder getroffen werden, eine Commission eingesetzt werde, die als die Commission für Legatverwaltung bekannt sein und genannt werden soll.

Beschlossen, daß für diese Commission folgende Instruction angenommen werde:

„Instruction der Commission für Legatverwaltung.

„§ 1. Die Commission soll ein genaues Verzeichniß aller Legate, welche, sei es direct, sei es indirect, der Synode vermacht sind, oder noch vermacht werden mögen, anlegen und fortführen.

Articles of Association.

Whereas a voluntary organization has existed since 1847 of the "German Evangelical Lutheran Synod of Missouri, Ohio and other States", acknowledging as a true exhibition of sound christian doctrine the book of Concord of the Year of our Lord 1580, and which association has been enabled to extend its labors through out many states of this union and elsewhere, and has caused several corporations to be organized and created for the purpose of assisting and conducting colleges, seminaries and other institutions of learning in order thereby to aid in the disseminating of a knowledge of the word of God and in the educating of ministers and teachers to labor in the Lutheran Church,

and as it is desirable that the parent corporation be incorporated with the view to fully carrying out the objects of its creation and the more readily to continue and perpetuate its labors;

Now Therefore, these articles of association are adopted and submitted as a basis of its incorporation, to-wit:

Article I. Name.

The name of this corporation shall be the "German Evangelical Lutheran Synod of Missouri, Ohio and other States", and an office of the same shall be located in the city of St. Louis, in the State of Missouri.

Article II. Membership and Objects.

The object of this association shall be to unite in a corporate body the members of the German Evangelical Lutheran Church who remain true to and acknowledge as a true exhibition of sound christian doctrine the book of Concord of the year of our Lord

Fifteen hundred and eighty; to receive, acquire, hold, manage and control the real and personal property and franchises which may hereafter be acquired by this corporation and such as have heretofore been obtained and are now held by different educational corporations, under its direction and for its advancement, and to continue and perpetuate the good work of disseminating the gospel throughout the world.

Article III. Membership.

The power of this corporation shall be lodged with the accredited clerical and lay delegates of the congregations in actual membership with this synod, not less than two and not more than seven. Congregations being entitled to one clerical and one lay representative in this organization at the option of said congregations, and only such delegates shall be entitled to a vote at the meetings of this Synod.

Article IV. Meetings.

This corporation shall have a general Synodal meeting once in three years and as many special meetings as may be called by its president. The time and place of the first meeting of this corporation shall be in the year 1880 on Wednesday, April 29th in Fort Wayne, Indiana, and regular meetings thereafter shall be held at such time and place in or out of the state of Missouri, as may be determined by the corporation at its regular meetings.

Article V. Officers.

The officers of this Association shall consist of a President, two Vice Presidents, (one for the eastern and the other for the western part of the Synod,) a Secretary and a Treasurer; the latter only may be elected from among the lay members of the Synod. How

tions of officers shall take place at its general meetings and be for a term of three years and until their successors are duly elected, and such officers shall constitute a Board of Directors of the corporation.

Article VI. Property.

This corporation shall be fully authorized to acquire and hold, by gift, grant, demise, devise or otherwise, any franchises, lands, tenements, hereditaments, moneys, rents, goods and chattels, of whatsoever kind the same may be, which are, or hereafter may be, given, granted, devised, devised to or purchased by it for its use, and particularly to acquire by direct conveyance or by declarations in trust, as may best suit the interests of this corporation, all rights, franchises and privileges of every kind and description and all real and personal property, which are now or may hereafter be held by the corporation known as and styled the "Trustees of the Concordia College", a corporation organized and incorporated by an act of the General Assembly of the State of Missouri, entitled "An act to incorporate the "Concordia College" of the German Evangelical Lutheran Synod of Missouri, Ohio and other States", approved February 23rd 1853; also by the corporation organized and incorporated under the name and style of the "German Theological Seminary of the German Evangelical Lutheran Synod of Missouri, Ohio and other States," duly incorporated under an act of the General Assembly of the State of Indiana, approved January 21st 1850 and under an amendatory act of said General Assembly of the State of Indiana, approved April 5th 1861; also by the corporation entitled the "Trustees of the Evangelical Lutheran Teachers Seminary," incorporated under the laws of the State of Illinois by

an act entitled "An act to incorporate the Evangelical Lutheran Teachers Seminary of the German Evangelical Lutheran Synod of Missouri, Ohio and other States, approved February 16th 1865, and under an act amendatory thereof approved February 21st 1867, and by a corporation organized May 10th 1868 under the name and style of "Concordia College" under the general incorporation laws of the State of Wisconsin and placed by the articles of association, thereof under the supervision and control of the German Evangelical Lutheran Synod of Missouri, Ohio and other States.

Article VIII. By-Laws.

This association shall have and make such by-laws as may appear necessary to accomplish the purpose of its creation and shall create such committees and other subordinate bodies as may seem desirable for the attainment of its general and special objects.

Article VIII. Amendments.

Amendments of these Articles of Association may be made at any time at a regular synodal meeting of this corporation providing the same be not inconsistent with the constitution or the laws of the United States or of the State of Missouri and a majority of the voting members present at such meeting have voted therefor, and such amendments be thereafter be first submitted to

the Circuit Court of the City of St. Louis.

H. C. Schwan, President
Aug. Rohlfach, Secretary

IN THE

Circuit Court, City of St. Louis, State of Missouri;

June Term, 1894

Monday July 2^d 1894

IN THE MATTER OF

the

(1290)

German Evangelical
Lutheran Synod of Missouri,
Ohio and other States

And now on this day come

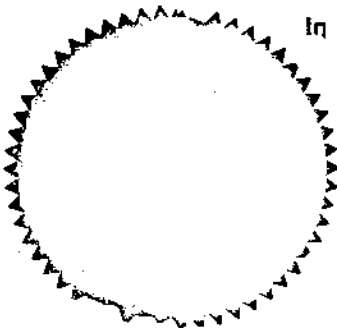
H. C. Schwan as President,
 August Rohrbach as Secretary,
 and O. F. Welcier as Treasurer,
 of the ~~German~~ "German Evangelical Lutheran Synod of
 Missouri, Ohio and other States"

and submit to the Court the articles of Agreement of said Association, together with a petition praying for a pro forma decree thereon, in manner provided by law, and it appearing to the Court that said petition has remained on file in the Clerk's office of this Court for at least three days since the same was first presented to the Court, and the Court having duly examined said articles of Agreement, and being duly advised in the premises, doth now consider, adjudge and determine that such articles of Agreement and the purposes of the Association as therein expressed, come properly within the purview of Article X of Chapter 42 of the Revised Statutes of the State of Missouri, 1889, entitled, "Benevolent, Religious, Scientific, Fraternal-Beneficial, Educational and Miscellaneous Associations," and are not inconsistent with the Constitution or laws of the United States or of the State of Missouri.

STATE OF MISSOURI, } ss.
 CITY OF ST. LOUIS,

I, PHILIP H. ZEPP, Clerk of the Circuit Court, City of St. Louis, State aforesaid, certify the above to be a true copy of the order made in the matter aforesaid, as fully as the same remains of record in my office.

In Testimony Whereof, I hereunto set my hand and affix the seal of said Court at office in the City of St. Louis, this 3^d day of July A. D., 1894



Philip H. Zepp
 Clerk Circuit Court.

STATE OF MISSOURI }
CITY OF ST. LOUIS }

I, the undersigned, Recorder of Deeds for said City and State, do hereby certify that the foregoing Unrecorded instrument of writing was filed for record in my office on the Eleventh day of July A. D. 1894 at 3:30 o'clock P. M. and is to be recorded in Book Conf. 14 Page 88.
WITNESS my hand and official seal on this day and year aforesaid.

91

100

100

RECORD OF DEEDS

73

321

Charles H. [Signature]
Clerk

W. A. J. DBBS
RECORDERS

JUL 11 1894

FILED FOR RECORD

INDEX DIRECT

James [Signature]
James [Signature] of Missouri
due and other State

- OF -

IN THE MATTER

No. 1290

Room 3

1291

495

Ms. A. 9. 1. 1. 1. 1.

Articles of Association
of the

German Evangelical
Lutheran Synod of
Massachusetts, Ohio and
other States.

Chas. F. Smith

St.

PRINTED

condemned

JUL 13 1894

MASSACHUSETTS